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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1886.

No. 236.

THE OREGON RAILWAY AND NAVIGATION COMPANY, PLAINTIFF IN ERROR,

vs.

THE OREGONIAN RAILWAY COMPANY (LIMITED).

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

FILED OCTOBER 22, 1886.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1889.

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IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF OREGON.

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1 UNITED STATES OF AMERICA, } ss:
District of Oregon, }

To the Oregonian Railway Company, Limited, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in October, A. D. eighteen hundred and eighty-six, on the third Monday of said term, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Oregon, wherein The Oregon Railway and Navigation Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said district, this September 21st, 1886.

MATTHEW P. DEADY,
U. S. District Judge, Oregon.

2 [Endorsed:] No. 1120. U. S. circuit court, district of Oregon. —— —— *vs.* —— ——. Citation on writ of error. Filed —— —, 188–. —— ——, clerk, by —— ——, deputy clerk.

DISTRICT OF OREGON, ss:

We hereby acknowledge due service of the within citation upon us, at Portland, in said district, this the 22nd day of September, A. D. 1886, by delivery to us — a copy thereof at said time and place.

WHALLEY, BRONAUGH, NORTHUP & DEADY,
Attorneys for Plaintiff.

3 UNITED STATES OF AMERICA, } ss:
District of Oregon, }

To the Oregonian Railway Company, Limited, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in October, A. D. eighteen hundred and eighty-six, on the third Monday of said term, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Oregon, wherein The Oregon Railway and Navigation Company is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should not be done to the parties in that behalf.

Given under my hand, at Portland, in said district, this September 21st, 1886.

(Signed) MATTHEW P. DEADY,
U. S. District Judge, Oregon.

4 [Endorsed:] No. —. U. S. circuit court, district of Oregon. —— —— *vs.* —— ——. Citation on writ of error. Filed —— —, 188–. —— ——, clerk, by —— ——, deputy clerk.

DISTRICT OF OREGON, *ss:*

We hereby acknowledge due service of the within citation upon us, at Portland, in said district, this 22nd day of September, A. D. 1886, by delivery to us — a copy thereof at said time and place.

WHALLEY, BRONAUGH, NORTHUP & DEADY,
Attorneys for Plaintiff.

5 In the Supreme Court of the United States.

THE OREGONIAN RAILWAY COMPANY, Limited, *vs.* THE OREGON RAILWAY & NAVIGATION COMPANY. } No. 1120. Writ of Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of Oregon, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before the Honorable Matthew P. Deady, one of you, between The Oregonian Railway Company, Limited, plaintiff and defendant in error, and The Oregon Railway and Navigation Company, defendant and plaintiff in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by complaint doth appear, and we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid and in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. eighteen hundred and eighty-six, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being then and there inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States of America should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this Sept. 23, 1886.

[Seal United States Circuit Court, Oregon.]

R. H. LAMSON,
Clerk of the Circuit Court of the United States for the District of Oregon,
By ——,
Deputy Clerk.

[Endorsed:] In the Supreme Court of the United States. —— —— *vs.* —— ——. Writ of error. Filed —— —, 188–. —— ——, clerk, by —— ——, deputy clerk.

6 In the Supreme Court of the United States.

THE OREGONIAN RAILWAY COMPANY, Limited, *vs.* THE OREGON RAILWAY & NAVIGATION COMPANY. } No. 1120. Writ of Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the judges of the circuit court of the United States for the district of Oregon, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court before the Honorable Matthew P. Deady, one of you, between The Oregonian Railway Company, Limited, plaintiff and defendant in error, and The Oregon Railway and Navigation Company, defendant and plaintiff in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by complaint doth appear, and we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid and in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. eighteen hundred and eighty-six, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being then and there inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States of America should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this Sept. 23, 1886.

[SEAL.]

R. H. LAMSON,
Clerk of the Circuit Court of the United States for the District of Oregon,
By —— ——,
Deputy Clerk.

[Endorsed:] In the Supreme Court of the United States. —— —— *vs.* —— ——. Writ of error. Filed —— —, 188–. —— ——, clerk, by —— ——, deputy clerk.

7 In the Circuit Court of the United States for the District of Oregon. October Term, 1884.

Be it remembered that on the 18 day of March, 1885, there was duly filed in the circuit court of the United States for the district of Oregon a complaint in words and figures as follows, to wit:

8 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Def't.

Complaint.

The plaintiff is a corporation duly organized & incorporated under the laws of Great Britain and a citizen of Great Britain and is the owner of a certain railroad and other property described in the indenture of lease hereinafter mentioned, and is recognized as a corporation so owning such railroad by the laws of this State.

The defendant is a corporation duly organized and incorporated under the general incorporation laws of this State and under articles of incorporation whereof the article numbered 3 is as follows:

Art. 3.

The business of this company shall be:

First. To construct and equip the following railroad and telegraph lines, namely: First, a line along the south side of the Columbia river between Portland & Umatilla; second, a line from Umatilla across the Blue Mountains through the Grande Ronde Valley in a southeasterly direction to a point on the east State line of Oregon towards Boisé City; third, a line from Umatilla to Wallula, in Washington Territory; fourth, a line from Wallula, in Washington Territory, by way of Weston, southerly to the point of intersection with the line in Oregon secondly described; fifth, from Walla Walla, in Washington Territory, in a northeasterly direction by Dayton to the Snake river; sixth, from a point on the Snake river, in Washington Territory, near the mouth of the Palouse river, in a northeasterly direction to the head-waters of the
9 Spokane river, and to maintain and operate such railroad, telegraph line, and branches, carry freight and passengers thereon, and receive tolls for the same.

Second. To purchase and consolidate with or lease or operate and maintain, on such terms as may be agreed upon, any railroad or railroads in Oregon, Washington, Idaho, or Utah, with its or their rolling stock, equipments, or appurtenances, and complete the same to its authorized terminus.

Third. To facilitate and assist the construction, building, extension, equipment, and operation of any railroad line, steamship line, or steamboat line in Oregon, Washington, or Idaho, or steamship line running from Portland to any other ports on the Pacific Ocean and connecting or intending to connect or exchange traffic with the railroads, steamships, or steamboats of this corporation, and for such purpose to subscribe for or purchase the stocks or bonds of any company owning or operating any such railroads, steamships, or steamboats, to guarantee or otherwise secure the payment of any

such bonds or the interest thereon by pledge or mortgage of the property of this corporation or any part thereof or otherwise, and to consolidate with or lease or contract for the operation and maintenance of any and all such railroads, steamship or steamboat companies so aided, and to obtain from Congress or the Legislatures of Washington, Idaho, and Utah Territories the necessary charters or other legislative authority for the extension of the railroads of this company into said Territories or for the carrying out of any of the objects herein specified.

Fourth. To build, purchase, and own and run steamships between the ports of Portland, Astoria, Victoria, Sitka, San Francisco, or any other ports in the North Pacific Ocean and steamboats on the Columbia, Willamette, and Snake rivers, and also to build, purchase, and own docks, piers, warehouses, locks, ferry-boats, stages, and other means of transportation in connection with the railroads, steamships, and steamboats above mentioned.

Fifth. To purchase or acquire lands or lots, whether adjacent or contiguous to its railroads, docks, or warehouses, and to hold, possess, improve, lease, sell, mortgage, or otherwise dispose of such lands in such manner as may be deemed fit.

Sixth. To borrow money on bonds, notes, or otherwise for the general purposes of the corporation, and to mortgage its railroads, steamships, steamboats, franchises, rolling stock, and any and all other property to secure the payment thereof.

Seventh. To do all other things necessary or proper for the accomplishment of the objects above specified.

On or about the 1st day of August, 1881, the plaintiff and defendant, pursuant to resolutions of their respective boards of directors, duly executed, under their respective corporate seals, an indenture of lease, which is in the words and figures and to the effect following:

11 This indenture, made the first day of August, 1881, between the Oregonian Railway Company, Limited, of Dundee, in Scotland (hereinafter called the lessors), of the one part, and the Oregon Railway and Navigation Company of Portland, in Oregon, in the United States (hereinafter called the lessees), of the other part: Whereas the lessors are the owners of a railroad in Oregon (hereinafter called "the existing railroad") consisting of two branches, namely, the East Branch, beginning at or near Ray's Ferry and running south to Brownsville, and extending, including sidings, to 74 miles or thereabouts, with a branch to Waldo, extending, including sidings, to 5 miles or thereabouts, and the West Branch, beginning at Ray's Ferry and running south to Monmouth, with branch to Sheridan, and extending in all, including sidings, to 55 miles or thereabouts; and whereas the lessors are in course of extending the said branches respectively, as to the East Branch, from Brownsville to Coburg, 19 miles or thereabouts, including sidings, and, as to the West Branch, from Monmouth to Airlie, 12 miles or thereabouts, including sidings, and such extensions are hereinafter called "the proposed extensions of the railroad;" and whereas the aggregate mileage of the existing railroad (including in such mileage the length of all sidings) is 134

miles or thereabouts and the aggregate mileage of the proposed extensions of the railroad (including in such mileage the length of all sidings) will be 31 miles or thereabouts; and whereas the whole of the existing railroad has not yet been fully completed, certain machine shops and other workshops and the stations and water-tanks and the bridge over the North Santiam river being unbuilt or unfinished, and the track not yet laid on the greater part of the Waldo Branch and on some other parts of the road, in all about eight miles long, and the greater part of the road has not yet been ballasted and, farther, requires to be raised at various points, as follows: Near the South Santiam, for one mile, to be raised three feet, and for another mile to be raised one foot; near Brownsville, for two and one-half miles, to be raised one foot, and near Ray's Ferry, for three-quarters of a mile, to be raised three feet; and whereas the lessors have issued shares of £10 each, 32,000 in number, to the nominal amount of £320,000, and such shares have been paid up to the extent of £4 each on 16,000 of such shares and to the extent of £2 each on the remaining 16,000 of such shares, and further calls may still be made by the lessors on and in respect of said several shares or some of them; and whereas the lessors have issued bonds called 1880 bonds and have issued or are about to issue additional bonds called 1881 bonds, and have secured and are about to secure the said several bonds issued and to be issued by mortgages made and to be made over the existing railroad and proposed extensions of the railroad and the rolling stock of the lessors, the particulars of which bonds are specified in the second and third schedules hereto, and which are hereby mutually agreed and declared to be good, valid, and effectual; and whereas it has been agreed between the parties hereto that the lessors shall grant and the lessees accept a lease in the terms of these presents: Now, this indenture witnesseth that, in consideration of the sum of £5,974 paid on the execution of these presents (the receipt whereof the lessors hereby acknowledge) and of the rent hereinafter reserved and of the covenants and agreements by the lessees hereinafter contained, the lessors do hereby demise unto the lessees and the lessees do hereby lease from the lessors all and singular the existing railroad, with the proposed extensions thereof, as hereinbefore described, with all stations, depots, sidings, turn-tables, pumps, tanks, yards, warehouses, machine shops, and other works and conveniences, and the right of way, thirty feet in width on each side
12 from the middle of the track of said railroad and the extensions thereof, with all depot grounds, as hereinafter limited and specified, and the rolling stock of said railroad, as enumerated and described in the first schedule hereto, together with all tools, machinery, implements, supplies, and equipments of every description, and all franchises, rights, powers, and privileges to which the lessors are entitled or shall at any time hereafter become entitled in connection with the said railroad and such proposed extensions as aforesaid; to have and to hold the same (subject to the mortgages made and intended to be made as aforesaid) unto the lessees for the term of 96 years from the 1st day of August, 1881, yielding and paying therefor during the said term the yearly rent of £28,000 in

sterling money, to be paid by equal half-yearly payments on the 15th day of May and the 11th day of November in each year, in advance; the first payment, however, made on the execution of these presents, and the receipt whereof is hereinbefore acknowledged, being the apportioned rent reduced, as hereinafter mentioned, as for the period from the first day of August, 1881, to the 11th day of November, 1881, and the second payment to be made on the said 11th day of November, 1881, for the half year following, and so on half yearly on the 15th day of May and the 11th day of November thereafter for each half year, in advance; and the said rent to be paid free and clear of and from all taxes, charges, and assessments whatsoever now existing or hereafter to be imposed by lawful authority on the lessors or on all or any of the demised premises, including all property and income tax of the United States or the State of Oregon, which said rent shall be paid in sterling money by the lessees to the lessors, at the bank of the British Linen Company, in London, in England: Provided always, and it is hereby agreed and declared, that the said yearly rent shall be reducible in manner following—that is to say: (A) Until the existing railroad shall be fully completed to the length, including sidings, of 134 miles, and shall be fully equipped with stations, water-tanks, and pumps, so that there shall be between Ray's Ferry and Brownsville not less than ten station-houses, costing in the aggregate not less than $5,000, and not less than five water-tanks and pumps, costing not less than $2,500, and until the bridge over the North Santiam river shall be finished according to the contracts and specifications under which the same is now in course of construction, and until the track shall be raised at the points and in the manner hereinbefore recited as necessary, the said rent shall be reduced by a sum at the rate of £1,376 yearly. (B) Until the East Branch of the existing railroad shall have been completed from Brownsville to Coburg the said rent shall be reduced by a sum at the rate of £3,268 yearly. (C) Until the West Branch of the existing railroad shall be completed from Monmouth to Airlie the said rent shall be reduced by a sum at the rate of £2,064 yearly. (D) If and whenever during the term any of the bonds of the lessors shall be paid off by means of any sinking fund established as hereinafter provided, then, until new bonds of the lessors shall be be issued in the place thereof, as provided by clause 18 hereof, the said rent shall be reduced by a sum equal to £6 for every £100 of principal moneys secured by the bonds so paid off. (E) If, on admeasurement thereof when completed, it shall appear that the entire railroad, including in the mileage the length of all sidings, is less than 163 miles in extent, the said rent shall be reduced at the rate of £172 for every mile found deficient, and at the same proportionate rate for any part of a mile found deficient; and this indenture also witnesseth that, in pursuance of the said agreement and for the reciprocal considerations herein appearing, the lessors, so far as the stipulations and provisions of these presents are to be performed and observed by them, hereby covenant with the lessees, and the lessees, so far as the stipulations and provisions of these presents are to be performed and observed by them, hereby

covenant with the lessors in manner following (that is to say):

13 1. The lessors shall before the 31st day of December, 1881, prepare a plat or map showing the line of the existing railroad and of the proposed extensions of the railroad and the situation or proposed situation of all depots or stations in connection therewith, and in such plat the track or intended track of such railroads and a space of 30 feet on each side from the center of such track, and a space not exceeding 10 acres at each of the first-class depots or stations, as specified in the first schedule hereto, if said lessors shall own so much ground at such stations, and a space not exceeding 5 acres at each of the other depots or stations on said railroad and the extensions thereof, if said lessors shall own so much ground at such stations, shall be distinguished by a special color, and all the land of the lessors not included in the spaces so distinguished shall be deemed to be surplus lands and to be excluded from this lease, and such surplus lands may accordingly be sold, disposed of, or dealt with in such manner as the lessors think fit: Provided, however, that the lessors shall not be entitled to any surplus lands unless and until 163 acres in the whole have been set off and platted as depot grounds on said railroad and the extensions thereof.

2. The lessees shall with all convenient speed ballast the existing railroad so far as not ballasted, and the proposed extensions so far as they may not be ballasted, in a proper and workmanlike manner and so that the same shall be in a fit and proper state for public traffic, and the lessors shall pay the lessees therefor at the rate of $420 per mile, and for this purpose the lessees shall have full and free ingress and egress to and from and use of any or all the gravel pits now owned and in the possession of the lessors.

3. The lessors shall fully complete the existing railroad and shall fully equip the same to the length (including sidings) of 134 miles with all necessary machine shops and other workshops (the lessees having the right to fix the location of the same), station-houses, water-tanks and pumps, to be built according to contracts and specifications similar to those under which the like structures were built upon that part of the road between Ray's Ferry and Brownsville; shall finish the bridge over the North Santiam river according to the contracts and specifications under which the same is now in course of construction; shall raise the track at the points and in the manner hereinbefore recited as being necessary, and shall construct and complete the proposed extensions of the railroad, all of which the lessors shall do and complete before the first day of January, 1882: Provided always, that in the event of loss or accident to vessels carrying rails or other materials, or from any other accidental or unavoidable cause, the said periods shall be enlarged to a reasonable extent; and it is hereby declared that as regards each of the said extensions the words "construct and complete" in this clause used mean that the lessors shall construct and complete the same in a good and substantial manner and place the same in efficient working order and condition fit to be opened for public traffic, with all necessary and proper sidings, stations, depots, warehouses, goods sheds, and other buildings, and all turn-tables, tanks, signals, tele-

graph lines, and other works and conveniences as shall reasonably be required for working the same in an efficient manner, and so that the said sections shall be at least as well constructed as that portion of the existing line which lies between Ray's Ferry and Brownsville' and equipped with the engines, tenders, carriages, wagons, and trucks specified and set forth in the first schedule hereto annexed, and which shall be of as good quality as those upon the existing railroad. In case the lessors shall fail to comply with any of the requirements of these provisions within the date above specified, then the lessees may proceed to do all things necessary to complete the same in a good and substantial manner and put the same
14 in efficient working order, and if the cost to the lessees of such completion shall exceed the amount by which the said rent is reducible, as hereinbefore provided, then the said rent shall be further reducible by a sum equal to such excess.

4. Until the proposed extensions of the railroad shall have been constructed and completed as aforesaid the lessees shall from time to time, at the request of the lessors or their contractors or agents, transport free of charge, by the ordinary trains, with reasonable expedition, over the existing railroad and upon any steamers of the lessees which may ply between Portland and Ray's Ferry, all workmen and materials intended to be employed in the construction and completion of such extensions or any part thereof, but so that all such materials shall be loaded and unloaded by the lessors, their contractors or agents.

5. The lessees shall and will yearly and in every year during the said term well and truly pay or cause to be paid unto the lessors the said yearly rent, hereinbefore reserved, on the days and in the manner hereinbefore appointed for payment thereof, free and clear of and from all taxes, charges, and assessments, as hereinbefore provided.

6. Each of the holders for the time being of any of the shares issued by the lessors as aforesaid, and each of the holders for the time being of any of the bonds issued or to be issued by the lessors as aforesaid, or which shall hereafter be issued by them pursuant to clause 18 hereof, shall, over and beyond and irrespective of all rights and remedies and all actions competent to the lessors in their corporate capacity, have a separate and independent cause of action against the lessees in respect of any breach by the lessees of the obligations imposed on them by these presents, and in respect of any such breach shall be entitled to recover from the lessees by way of liquidate damages a sum equal to the amount which would have been payable to him by way of dividends or interest out of the rent in arrear.

7. The lessees shall and will pay, satisfy, and discharge all assessments, taxes, charges, transit duties, and impositions whatsoever that shall or may be lawfully assessed, laid, or imposed on the said lessors by any power or authority whatsoever during the term, or on the said demised premises or the franchises, property, earnings, traffic, and business of the said demised premises or arising in any way therefrom, or to which the lessors would have been subject if this

lease had not been made and they had remained in possession of the demised premises and operated the same.

8. The lessees shall defend all actions of every kind that may or shall be depending against the said lessors or that may thereafter arise during the term in respect of the construction, maintenance, or operation of said railroads other than actions for compensation for right of way or depot grounds, as herein specified and defined, or for recovery of the possession of any such premises, and shall pay all amounts that shall or may be recovered against the said lessors in any such actions, and shall also indemnify and save harmless the said lessors of and from all causes of actions, legal and equitable, and claims and demands that shall or may arise against them from the exercise of the powers conferred by this lease upon the lessees.

9. The lessees shall at all times during the said term, at their own expense, maintain and operate the railroads and premises hereby demised as the lessors, as the owners thereof or otherwise, are now or may be by law entitled or bound to do, and shall keep up, maintain, and operate the same as first-class works, in thorough repair, working order, and condition, and will maintain and keep the rolling stock and equipment and other things hereby demised in good order and repair, and will replace any rolling stock or equipment or other things lost, worn out, or destroyed, so as to maintain the same equal in quantity and quality to that originally demised, using the best and most suitable materials for renewals of the same as renewals shall become from time to time necessary, so that the traffic and business of the said railroad shall be encouraged and developed and full public accommodation given on reasonable terms.

10. The lessees shall not alter the situation of the existing railroads or of the proposed railroads, respectively, or of any depots or stations belonging thereto without the consent in writing of the lessors, or without such consent of the lessors provide other stations and depot grounds, side tracks, or cut-offs not situated on the right of way or depot grounds hereby demised.

11. The lessees shall at all times during the term keep proper and business-like accounts of the lands, buildings, rolling stock, machinery, works, and property which form the subjects of this lease, and the books containing such accounts shall, at all reasonable hours and times, be open to the inspection and examination of the lessors, acting through their secretary or agents or any director or of such other person or persons as the said lessors shall from time to time by writing under their common seal appoint to examine the same.

12. The lessees shall and will at all times during the term give to the directors, agents, officers, and servants of the lessors full and free access, egress, and regress to and from and will permit them to enter into and remain upon the demised premises or any part thereof for the purpose of examining and ascertaining that the lessees are observing and performing the obligations imposed on them by this lease.

13. If the lessors shall fail to pay the interest on any of their

bonds for the time being charged on the demised premises and the lessees shall be compelled to pay the same, the lessees shall be at liberty to deduct the amount so paid, together with interest thereon, at the rate of 7 per cent. per annum, from the time of payment, from any subsequent rent becoming payable under these presents.

14. A sinking fund shall be established for the redemption of the 1880 bonds specified in the second schedule hereto, and for the purpose of such sinking fund the lessees shall, on the 15th day of May, 1884, and on the same day in each succeeding year up to and including the 15th day of May, 1895, pay to the trustees of said sinking fund, as hereinafter specified, the sum of £5,500, and all moneys so paid to the said trustees and the income thereof shall be from time to time employed in the purchase of said bonds at the lowest price at which said trustees may be able to purchase the same, but not exceeding 110 per cent. of the par value thereof, and until so employed shall be invested and accumulated; and in case there shall be any part remaining when the 1880 bonds become due thereupon such part of said sinking fund and the investments and accumulations thereof for the time being shall be converted into money, and the proceeds thereof shall be applied in paying off the 1880 bonds, and the surplus, if any, after deducting therefrom all money (if any) then due from the lessees to the lessors upon any account whatever shall be paid to the lessees, but should there be any deficiency the lessees shall pay the same to the said trustees or to the said lessors.

15. A sinking fund shall be established for the redemption of the 1881 bonds specified in the third schedule hereto, and for the purposes of such sinking fund the lessees shall, on the 15th day of May, 1884, and on the same day in each succeeding year up to and including the 15th day of May, 1901, pay to the trustees of said sinking fund, as hereinafter specified, the sum of £4,500, and all moneys so paid to the trustees and the income thereof shall be from time to time employed in the purchase of said bonds at the lowest price at which said trustees may be able to purchase the same, but not exceeding 110 per cent. of the par value thereof, and until so employed shall be invested and accumulated; and in case there shall be any part remaining when the 1881 bonds become due thereupon such part of said sinking fund and the investments and accumu-
16 lations thereof for the time being shall be converted into money, and the proceeds thereof shall be applied in paying off the 1881 bonds, and the surplus, if any, after deducting therefrom all moneys (if any) then due from the lessees to the lessors upon any account whatever shall be paid to the lessees, but should there be any deficiency the lessees shall pay the same to the said trustees or to the said lessors.

16. The trustees of said sinking fund shall be three in number—one from time to time appointed by the lessors, one from time to time appointed by the lessees, and one from time to time appointed by the British Linen Company, at the call either of the said lessors or the said lessees, or failing said company appointing one, then the lessors shall appoint one in their place. The concurrence of the

three trustees shall be necessary for any act, unless one of them shall be absent from Great Britain or incapable of acting, in which case the other two may act without the concurrence of the third.

17. The said lessees may make the payments to said sinking funds respectively or any part thereof in the bonds to be respectively redeemed by said sinking funds instead of in money, said bonds being in such case deemed equivalent to their par value in money.

18. When any of the lessors' bonds are paid off, or provision made for paying off same at not less than 110 per cent. as aforesaid, by means of the sinking funds established pursuant to these presents, the lessors shall, if thereunto required by the lessees, issue to the lessees new bonds, under the common seal of the lessors, for securing the payment of principal moneys equal in amount to the principal moneys secured by the bonds so paid off or provided for such purpose as aforesaid. The new bonds to be issued to the lessees upon the 1880 bonds and the 1881 bonds respectively being paid off or provided for shall all bear even date and be payable twenty years after date, and shall each be for securing the sum of £50 principal moneys or any multiple thereof, and shall provide for the payment of interest, at the rate of six per centum per annum, and shall all rank *pari passu* among themselves in point of charge, and shall rank in point of charge after any of the 1880 or 1881 bonds which may remain outstanding, and such new bonds shall not be charged on the uncalled capital for the time being of the lessors or be payable out of such capital, but shall contain an express exemption and release of the members of the lessors' company from any liability whatever in respect of said bonds, and, subject as aforesaid, shall be framed and secured by mortgage as nearly as may be in the same terms and manner as the 1880 and 1881 bonds respectively, with the declaration and covenant, however, like as it is hereby also specially covenanted and declared, that in no event nor under any circumstances shall the holders of or creditors in such bonds, or any coupons or interest warrants issued along with or applicable thereto, or of or in the amounts contained in such bonds, coupons, or interest warrants, be they principal or interest, have any claim, action, interest, or demand against the company, except as hereinafter mentioned, or against any member of the company, or against the uncalled capital of the company or any part thereof, or against any estate or asset, real or personal, of the company, except or other than the said railroad, rolling stock, and other subjects hereby demised and the rent payable out of and for the same, and that, too, only after all the other bonds, 1880 and 1881 as aforesaid, then remaining unpaid.

19. Any moneys which ought to be employed pursuant to clauses 14 and 15 hereof, until so employed, may be invested in or upon any stocks, funds, or securities of the British government, or the government of India, or any British colony, or in the stock of the Bank of England, or in the stock, bonds, or debentures of any city, borough, or other municipal corporation in Great Britain, or in the debentures or debenture stock of any dividend-paying rail-

 way company in Great Britain, and any such investments

may from time to time, at the discretion of the trustees, be varied for others of a like nature, and no trustee shall be liable for any other than his own intromissions, and no liability shall attach to any trustee in the event of any investment turning out to be unsound or insufficient.

20. An account shall be taken of the moneys which have been expended by the lessors, or for which they are liable, in relation to the Portland Branch railroad (the construction whereof has been abandoned by the lessors), and a fair valuation of the property acquired by the lessors for the purposes of that branch (excluding, however, the so-called levee blocks in the city of Portland and all other property granted by the Legislature of Oregon conditionally upon the extension of the railroad of the lessors to Portland) shall be made, and the lessees shall pay to the lessors (*a*) the amount of such fair value and (*b*) half the excess of the amount of the moneys expended as aforesaid over the amount of such fair value, but not exceeding in any case fifty thousand dollars, and upon the payment of said sums to the agents of the lessors in Oregon the lessors shall convey such property to the lessees absolutely. In the aforesaid account the cost, freight, and insurance of and duty on the steel rails and fastenings, including bolts, nuts, spikes, and fish-plates, already ordered for the said Portland Branch shall not be included, but such expense, as the same may be certified by the secretary of the lessors, shall be paid in sterling money by the lessees to the lessors in return for delivery of the said rails and fastenings: Provided, further, that in case the lessees shall at any time within ten years from the date of these presents construct a railroad over the route of the abandoned extension to Portland of the lessors' railroad, as hereinbefore mentioned, the lessees shall thereupon pay to the lessors the other half of the expense of such abandoned extension.

20*a*. The lessees shall pay to the lessors the sum of £7,000 in sterling money at the British Linen Company's Bank, in London, for the two steamers belonging to the lessors presently plying between Portland and Ray's Ferry; such payment shall be made on 1st August, 1881, but down to that date the lessees shall have the option of receding from this article.

21. The lessees shall indemnify William Reid, Ellis G. Hughes, and James B. Montgomery against all actions, suits, proceedings, costs, damages, claims, and demands in respect of freight receipts, and in accordance with a certain bond dated the second day of April, 1880, under the seals of the said William Reid, Ellis G. Hughes, and James B. Montgomery, for securing to one Joseph Gaston, but so far only as said bond relates to the freight receipts issued by the Dayton, Sheridan and Grande Ronde Railroad Company, and so that said lessees shall be liable only to the extent of the sum of $30,000.

22. The lessees shall pay to the lessors yearly and every year during the term, at the same time and place as the rental herein specified, the sum of £600 sterling money for the purpose of enabling the lessors to keep up their corporate organization and to pay their officers and office expenses.

23. The lessees shall not assign or sub-let the demised premises or any part thereof without the consent in writing under the common seal of the lessors first had and obtained; but such consent shall not be withheld from the consolidation or amalgamation of the lessee company with any other railroad company: Provided that such other company be a company regularly paying dividends out of its earnings and shall adopt and assume all the obligations, stipulations, and provisions imposed on the lessees by these presents.

24. In case the lessees shall at any time during the term omit to pay the rent or any moiety or instalment thereof, or fail to pay, keep, or perform the obligations or stipulations and provisions
18 hereinbefore mentioned and provided for or any of them, and shall continue in default in the premises for the period of ninety days, it shall be lawful for the said lessors, and they are hereby authorized and empowered, notwithstanding the appointment of any receiver and manager, pursuant to clause 27 hereof, or otherwise, to enter into and upon the demised premises, or such as may be then subsisting in their place and forming the subjects of this lease, and remove all persons therefrom, and from thenceforth to have, hold, possess, and enjoy the same as of their first and former estate therein, and thereupon all the estate and interest of the lessees in and to the same shall absolutely cease and determine as though these presents had never been made: Provided always, however, and it is expressly understood and agreed, that the said rent shall in such event be apportioned from the time of the last preceding payment of any instalment thereof to the time of such entry: And provided, further, that such re-entry shall not in manner affect any claim for damages against the lessees resulting from any breach of any of the covenants hereinbefore contained.

25. At the end of the said term, or at the sooner determination of this lease, the said lessees shall redeliver and surrender up to the lessors the said several subjects of this lease, or such of them as shall then be subsisting in their place, in as good order and condition as the same now are, but not including any rolling stock or equipment beyond the quantity specified in the schedule hereto.

26. The lessees paying the rent hereby reserved, and performing the several stipulations and provisions hereinbefore contained, shall peaceably hold and enjoy the demised premises during the term without any interruption by the lessors or any persons lawfully claiming through them.

27. If the lessees shall make default in the payment of any rent hereby secured, or in the performance or observance of any of the obligations or stipulations imposed on them by these presents, the lessors shall be at liberty to obtain from any court of competent jurisdiction an order appointing a receiver and manager of the demised premises, with all such powers and authorities as may seem to the court best calculated to secure the performance and observance of the obligations hereby imposed on the lessees according to the true intent and meaning of these presents, and the consent of the lessees to the appointment of any such receiver and manager shall not be necessary, and the remuneration of any such receiver and manager

shall be in the discretion of the court, and the lessors (without the consent of the lessees) may at any time apply for and obtain an order discharging any such receiver and manager; and the appointment and discharge of a receiver and manager shall be without prejudice to any subsequent appointment as and whenever the occasion shall arise.

28. The lessors shall and will from time to time, and at all times hereafter, at the request and cost of the lessees, make, execute, and deliver all such other and further instruments and assurances in the law for the further, better, or more perfectly assuring the premises hereby demised to use and in the manner aforesaid, according to the true intent and meaning of these presents, as by the lessees or their counsel learned in the law shall be reasonably devised, advised, or required.

29. In case any difference arises between the lessors and the lessees touching the preparation of the plat or map of the demised premises, or the extent of right of way and depot grounds hereby demised, or touching the exact length of the railroad hereby demised, or the completion of the extensions thereof, or the amounts to be paid by the lessees to the lessors for the property acquired for the abandoned extension to Portland, or as to the lessees' share of the expenses of such extension, every such difference shall be referred to and determined by the arbitration of two arbitrators, one to be appointed by each of the parties under and subject to the following provisions and conditions:

19 1st. If either party do not, within thirty days after being thereunto requested in writing by or by the agent of the other party, appoint an arbitrator, then both arbitrators shall be appointed by the party by whom or by whose agent the request was made.

2d. The two arbitrators, before entering on the business of the reference, shall by writing under their hands appoint an impartial and qualified person to be their umpire.

3d. If the two arbitrators do not within thirty days after their appointment appoint an umpire, then, on the application of the parties in difference or either of them, an umpire may be appointed by a judge of any court of competent jurisdiction.

4th. If the two arbitrators do not within ninety days next after the matter in difference is referred to them agree on their award thereon, then it shall be referred to the umpire.

5th. The award of the two arbitrators or of the umpire, if made in writing under their or his hands or hand and ready to be delivered to the parties in difference, or such of them as desire it, within ninety days next after the matter in difference is referred to the two arbitrators or to the umpire, shall be binding and conclusive on all parties interested, their successors and assigns, and all such things shall be forthwith thereafter done, omitted, or suffered as the award requires.

6th. The two arbitrators and the umpire respectively may, if they and he respectively think fit, make several consecutive awards instead of one award, and every such award shall be binding and con-

clusive as to all matters to which it extends and as if the matter awarded on were the whole matter referred.

7th. The two arbitrators and the umpire respectively shall have full power to examine the books, accounts, and papers of the lessor company relating to the matter in difference, and to examine the parties in difference and their respective agents and witnesses on oath or affirmation.

8th. The two arbitrators and the umpire respectively shall have full power to proceed in the absence of either or both of the parties in every case in which, after giving notice in that behalf to both parties, he or they shall so think fit to proceed.

9th. The arbitrators and the umpire respectively may proceed in the business of the reference in such manner as he and they respectively shall think fit, but so that they act in the reference at Portland, in Oregon, or upon the demised premises or some part thereof, and so that where any matters referred to him or them involves an examination, valuation, or measurement of any part of the demised premises he or they shall make such examination, valuation, or measurement, either personally or by some duly qualified civil engineer appointed by them.

10th. The umpire shall have full power, from time to time, by writing under his hand, to extend the time within which his award is to be made, and if it be made and ready to be delivered within the extended time it shall be valid and effectual as if made and ready to be delivered within the ninety days.

11th. The costs of and incident to the reference and the arbitration and the award respectively shall be in the discretion of the arbitrators and the umpire respectively.

12th. If and so far as the award does not otherwise determine, the costs of the arbitration and of the award shall be borne and paid by the two parties in difference in equal shares, and in other respects they shall bear their own respective costs.

13th. The submission to reference hereby made may at any time be made a rule of any court of law or equity on the application of any party or person interested, and the court may remit the matter to the arbitrators or to the umpire, with any directions the court thinks fit.

30. A notice addressed to the lessors at their office at Dundee, in Scotland, and posted as a registered letter, shall be deemed to have been duly given to the lessors for all purposes of these presents at the time when the same would be delivered in ordinary course of post; and a notice addressed to the lessees at their office in Portland, in the State of Oregon, and posted, shall be deemed to have been duly given to them for all purposes of these presents at the time when the same would be delivered in the ordinary course of post, and for purposes of such notice the ordinary course of post between Oregon and the United Kingdom shall be deemed not to exceed forty days.

31. Whereas by reason of distance, lapse of time, or other accident the dates of the actual execution of this indenture by the various parties thereto may be subsequent to the day on which it bears date,

now it is hereby expressly agreed and declared that this indenture shall be dated the first day of August, 1881, and shall be valid and effectual as if executed on the day of the date thereof. In witness whereof the parties hereto, pursuant to resolutions of their respective boards of directors duly authorizing the same, have caused these presents, executed in duplicate, to be sealed with their respective corporate seals, and the said Oregonian Railway Company, Limited, has likewise caused these presents to be signed by two of its ordinary directors and by its secretary, and the said Oregon Railway and Navigation Company has likewise caused these presents to be signed by its president and by its assistant secretary the day and year above written.

THE OREGONIAN RAILWAY COMPANY, LIMITED,

{Seal of the Oregonian Railway Company, Limited.}

(Signed) By THOMAS H. COX, *Director.*
(") JOHN LENG, *Director.*
Attest: (Signed) DAVID FERGUSON, *Secretary.*

In the presence of—
(Signed) A. WILSON, JR.,
Cashier to Messrs. Thomas Thornton, Son & Coy, solicitors, Dundee, witness.
(") JOHN SIMPSON, JR.,
Apprentice to Thomas Thornton, solicitor, Dundee, witness.

THE OREGON RAILWAY AND NAVIGATION COMPANY,

{Seal of the Oregon Railway and Navigation Company.}

(Signed) By H. VILLARD, *President.*
Attest: (Signed) TROILUS H. TYNDALE,
Assistant Secretary.

In the presence of—
(Signed) JAMES BOYCE MONTGOMERY.
(") GEO. A. SAXTER,
20 Nassau St., New York.

21 STATE OF NEW YORK, } *ss:*
City and County of New York, }

Be it remembered that on this 29th day of August, A. D. 1881, before me, Hector H. Tyndale, a commissioner of the State of Oregon in and for the State of New York, residing in said city of New York, personally appeared Henry Villard, the president of the Oregon Railway and Navigation Company, and Trolius H. Tyndale, the assistant secretary of the same company, to me respectively personally known to be such, who, being by me severally duly sworn, did depose and say that he, said Henry Villard, resides in the city and State of New York; that he, said Troilus H. Tyndale, also resides in said city and State of New York; that he, said Henry Villard, is the

president, and he, said Troilus H. Tyndale, is the assistant secretary, of said company; that they know the corporate seal of said company; that the seal affixed to the foregoing instrument is such corporate seal; that it was so affixed thereto by order of the board of directors of said company, and that they, said Henry Villard and Troilus H. Tyndale, signed their names thereto by the like order as president and assistant secretary of said company respectively, and they further acknowledged the execution of the within instrument to be their free and voluntary act and deed, and as the free and voluntary act and deed of said company for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal this 29th day of August, 1881.

[SEAL.] (Signed) HECTOR H. TYNDALE,
Commissioner for Oregon in New York.

I hereby certify that the within lease and schedules are in all manner and form executed and acknowledged by the Oregon Railway and Navigation Company in accordance with the laws of the United States and of Oregon regulating the execution and acknowledgment of instruments under seal by private corporations.

[SEAL.] (Signed) HECTOR H. TYNDALE,
Commissioner for Oregon in New York.

22 CONSULATE OF THE UNITED STATES,
DUNDEE, SCOTLAND,

The Thirteenth Day of September, A. D. 1881.

I, John F. Winter, consul of the United States of America for Dundee, Scotland, and the dependencies thereof, do hereby certify that on the day of the date hereof before me personally appeared Thomas Hunter Cox and John Leng, directors, and David Ferguson, secretary, personally known to me to be two of the ordinary directors and the secretary of the corporation, the Oregonian Railway Company, Limited, and to be the identical persons who as such directors and secretary executed the within lease and schedules thereto therein referred to for, on behalf of, and as the act and deed of the said corporation, the Oregonian Railway Company, Limited, and did to me declare and acknowledge that, being thereto duly authorized and empowered, they did execute said lease and schedules as the act and deed of said corporation and on its behalf for the uses and purposes therein set out and expressed.

I further certify that the within lease and schedules are in all manner and form executed and acknowledged by the corporation, the Oregonian Railway Company, Limited, in accordance with the laws of Scotland regulating the execution and acknowledgment of instruments under seal by private corporations.

In witness whereof I have hereunto set my hand and affixed the seal of the consulate, at Dundee aforesaid, the day, month, and year

above written, and of the Independence of the United States the one hundred and sixth year.

[Seal of U. S. Consul.]

(Signed) JNO. F. WINTER,
Consul and ex Officio Notary Public of the United States of America at Dundee, Scotland.

23 *The First Schedule Above Referred to.*

A—Rolling stock and equipment of the completed railroad.

5 locomotives.
3 first-class coaches.
1 second-class coach.
1 caboose.
36 box cars.
81 flat cars.
17 hand cars and tools.

B—Rolling stock and equipment of the proposed extensions.

3 locomotives.
1 first-class coach.
2 second-class coaches.
2 baggage, mail, and express cars.
102 box cars.
10 flat cars.

C—First-class stations.

East side—Ray's Landing.
Woodburn.
Silverton.
Scio.
Brownsville.
Coburg.
West side—Dayton.
Sheridan.
Dallas.
Airlie.
} 10 first-class stations.

The Second Schedule Above Referred to.

A—Specification and description of the 1880 bonds.

No.	Amount.	No.	Amount.	No.	Amount.	No.	Amount.
1	£200	36	300	71	200	106	500
2	200	37	500	72	1,000	107	200
3	200	38	500	73	500	108	500
4	200	39	200	74	200	109	300
5	200	40	300	75	200	110	400
6	400	41	300	76	1,000	111	100

No.	Amount.	No.	Amount.	No.	Amount.	No.	Amount.
7	100	42	500	77	1,000	112	200
8	100	43	200	78	1,000	113	200
9	500	44	100	79	1,000	114	100
10	500	45	100	80	1,000	115	100
11	400	46	1,000	81	100	116	200
12	1,000	47	200	82	200	117	200
13	1,000	48	1,000	83	100	118	1,000
14	150	49	1,000	84	500	119	1,000
15	1,000	50	100	85	300	120	200
16	250	51	250	86	500	121	1,000
17	200	52	400	87	400	122	400
18	200	53	1,000	88	100	123	500
19	100	54	400	89	100	124	300
20	250	55	200	90	400	125	400
21	400	56	1,000	91	250	126	750
22	200	57	1,000	92	500	127	50
23	250	58	1,000	93	500	128	100
24	1,000	59	1,000	94	500	129	650
25	200	60	1,000	95	300	130	350
26	500	61	500	96	100	131	500
27	300	62	200	97	100	132	300
28	500	63	200	98	100	133	1,000
29	200	64	500	99	200	134	250
30	100	65	200	100	400	135	200
31	400	66	250	101	500	136	1,000
32	100	67	250	102	500	137	1,000
33	100	68	100	103	100	138	1,000
34	250	69	100	104	400	139	500
35	500	70	200	105	200	140	200

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141	500	157	100	173	1,000	189	1,000
142	1,000	158	300	174	1,000	190	500
143	1,000	159	300	175	1,000	191	500
144	400	160	1,000	176	1,000	192	300
145	200	161	1,000	177	1,000	193	1,000
146	300	162	200	178	500	194	1,000
147	500	163	1,000	179	100	195	1,000
148	300	164	100	180	300	196	1,000
149	50	165	1,000	181	200	197	50
150	500	166	1,000	182	100	198	250
151	500	167	1,000	183	500	199	400
152	200	168	1,000	184	400	200	200
153	50	169	1,000	185	400	201	500
154	100	170	1,000	186	500	202	200
155	100	171	1,000	187	1,000	203	100
156	500	172	1,000	188	500	204	1,000

Total issue of 1880 bonds..... £95,000

B.—*Form of the* 1880 *Bonds.*

Oregonian Railway Company, Limited.

No. ——
of 1880 bonds.

We, the Oregonian Railway Company, Limited, incorporated under the companies acts, 1862, 1867, and 1877, grant us to have borrowed and received from —— —— the sum of ——, which sum we bind and oblige ourselves to repay to the said —— —— or —— heirs or assignees, within our registered office at Dundee for the time being, at the term of Whitsunday, eighteen hundred and ninety-five, or upon such subsequent day as may hereafter be mutually agreed on, with a fifth part more of the said principal sum of liquidate penalty in case of failure and the interest of the said principal sum at the rate of six pounds per centum per annum from the date hereof to the term of payment before specified, and in the event of the said loan being continued as aforesaid at such rate thereafter for the period of such continuance as may be agreed on, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment of the said interest at the term of Whitsunday next, for the proportion thereof which shall be due at that date, and the next payment of the same at the term of Martinmas following for the half year immediately preceding, and so forth by equal payments at the said two terms, yearly, termly, and continually thereafter, so long as the said principal sum shall remain unpaid, with a fifth part more of each of the said termly payments of liquidate penalty in case of failure in the punctual payment thereof; declaring that as we have herewith delivered interest warrants or coupons for the interest to become due at the several terms prior to and at the term of payment before specified, payable to bearer, we shall not be bound to make payment of interest during the currency of this loan except on delivery to us of the said interest warrants or coupons; and in security and for more sure payment of the sums of money above written, principal, interest, and penalties, and of these presents and of the interest coupons or warrants aforesaid, and in addition to the security for such payment granted or to be granted by a certain mortgage or deed of trust made or to be made by us, the said company, over and on our property and assets therein mentioned in the State of Oregon, in the United States of America, to John Guthrie Smith, Esquire, advocate, Edinburgh, sheriff of the counties of Aberdeen and Kincardine, and others, as trustees for the securing of such payment, and of the payment of all other similar bonds or obligations and interest coupons or warrants, designated or to be designated therein, to be secured thereby, we, the said company, do hereby assign, convey, dispone, and make over to the said —— ——, being the creditor in these presents, and —— aforesaid, along with the whole other holders of bonds or deeds of security or interest warrants or coupons for the time being of us, the said company, granted or to be granted in terms

similar to these presents, the property and assets of us, the said company, as now existing, including any unpaid capital of us, the said company, in so far as the same shall not have been paid up for the time being, already created and issued, but not including any capital or unpaid capital which may hereafter be created or issued; and declaring, in terms of our articles of association, that the respective holders of or other persons entitled to all deeds of security, in terms similar to these presents, granted or to be granted by us shall, proportionably according to the amount of money secured thereby or contained therein, be entitled to be paid out of our said property and assets, including any unpaid capital aforesaid for the time, the respective sums in such deeds of security mentioned, and the interest thereof, without any preference or priority one above another by reason of priority of date of any such deed of security or otherwise howsoever; and we consent to the registration hereof for preservation and execution.

In witness whereof these presents are subscribed on behalf of us, the said company, by ——, ——, two of the ordinary directors of us, the said company, and by ——, the secretary of us, the said company, and are also sealed with the common seal of us, the said company, all at Dundee, on the seventeenth day of December, in the year eighteen hundred and eighty, before the following witnesses, viz:

—— ——, *Witness.*
—— ——, *Witness.*

[FOR SEAL.]

—— ——, } *Directors.*
—— ——, }
—— ——, *Secretary.*

The Third Schedule Above Referred to.

A.—Specification and description of the 1881 bonds.

No.	Amount.	No.	Amount.	No.	Amount.	No.	Amount.
1	£200	39	200	77	200	115	100
2	200	40	200	78	200	116	100
3	200	41	200	79	200	117	100
4	200	42	200	80	200	118	100
5	200	43	200	81	200	119	100
6	200	44	200	82	200	120	100
7	200	45	200	83	200	121	100
8	200	46	200	84	200	122	100
9	200	47	200	85	200	123	100
10	200	48	200	86	200	124	100
11	200	49	200	87	200	125	100
12	200	50	200	88	200	126	100
13	200	51	200	89	200	127	100
14	200	52	200	90	200	128	100
15	200	53	200	91	200	129	100
16	200	54	200	92	200	130	100
17	200	55	200	93	200	131	100
18	200	56	200	94	200	132	100
19	200	57	200	95	200	133	100
20	200	58	200	96	200	134	100
21	200	59	200	97	200	135	100

No.	Amount.	No.	Amount.	No.	Amount.	No.	Amount.
22	200	60	200	98	200	136	100
23	200	61	200	99	200	137	100
24	200	62	200	100	200	138	100
25	200	63	200	101	100	139	100
26	200	64	200	102	100	140	100
27	200	65	200	103	100	141	100
28	200	66	200	104	100	142	100
29	200	67	200	105	100	143	100
30	200	68	200	106	100	144	100
31	200	69	200	107	100	145	100
32	200	70	200	108	100	146	100
33	200	71	200	109	100	147	100
34	200	72	200	110	100	148	100
35	200	73	200	111	100	149	100
36	200	74	200	112	100	150	100
37	200	75	200	113	100	151	100
38	200	76	200	114	100	152	100

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153	100	222	1,000	291	100	360	200
154	100	223	300	292	50	361	200
155	100	224	200	293	200	362	100
156	100	225	200	294	200	363	100
157	100	226	200	295	100	364	100
158	100	227	200	296	100	365	100
159	100	228	200	297	100	366	100
160	100	229	50	298	200	367	100
161	100	230	50	299	200	368	100
162	100	231	50	300	100	369	100
163	100	232	50	301	100	370	100
164	100	233	50	302	100	371	250
165	100	234	50	303	100	372	50
166	100	235	50	304	100	373	100
167	100	236	50	305	100	374	100
168	100	237	50	306	100	375	100
169	100	238	100	307	100	376	100
170	100	239	100	308	100	377	100
171	100	240	100	309	100	378	100
172	100	241	100	310	100	379	200
173	100	242	500	311	100	380	100
174	100	243	200	312	100	381	200
175	100	244	500	313	100	382	200
176	100	245	200	314	100	383	100
177	100	246	200	315	100	384	150
178	100	247	100	316	100	385	150
179	100	248	500	317	100	386	100
180	100	249	500	318	100	387	100
181	400	250	200	319	100	388	100
182	300	251	200	320	100	389	100
183	500	252	200	321	100	390	100

No.	Amount.	No.	Amount.	No.	Amount.	No.	Amount.
184	500	253	200	322	100	391	100
185	500	254	200	323	100	392	100
186	500	255	200	324	100	393	100
187	500	256	100	325	100	394	100
188	500	257	100	326	100	395	100
189	500	258	100	327	100	396	500
190	500	259	100	328	100	397	500
191	500	260	200	329	100	398	500
192	500	261	200	330	300	399	500
193	500	262	100	331	100	400	500
194	500	263	100	332	100	401	500
195	500	264	100	333	100	402	500
196	500	265	100	334	100	403	500
197	500	266	100	335	100	404	500
198	500	267	200	336	100	405	500
199	500	268	200	337	100	406	500
200	500	269	200	338	100	407	500
201	500	270	200	339	100	408	500
202	500	271	200	340	100	409	500
203	500	272	200	341	100	410	500
204	500	273	200	342	100	411	500
205	500	274	100	343	200	412	500
206	500	275	100	344	100	413	500
207	500	276	500	345	100	414	500
208	500	277	500	346	100	415	500
209	500	278	500	347	100	416	200
210	500	279	200	348	100	417	100
211	500	280	200	349	100	418	100
212	500	281	100	350	100	419	100
213	500	282	200	351	400	420	100
214	500	283	200	352	200	421	200
215	500	284	200	353	200	422	200
216	1,000	285	200	354	200	423	200
217	1,000	286	200	355	200	424	100
218	1,000	287	200	356	200	425	100
219	1,000	288	200	357	200	426	150
220	1,000	289	100	358	200	427	150
221	1,000	290	100	359	200	428	100

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429	100	479	200	529	200	579	200
430	100	480	200	530	250	580	200
431	200	481	200	531	100	581	200
432	200	482	200	532	100	582	200
433	100	483	200	533	100	583	200
434	100	484	200	534	100	584	200
435	200	485	200	535	100	585	200
436	200	486	200	536	100	586	200
437	200	487	200	537	100	587	200
438	150	488	200	538	200	588	200

No.	Amount.	No.	Amount.	No.	Amount.	No.	Amount.
439	200	489	200	539	200	589	200
440	100	490	100	540	200	590	200
441	200	491	100	541	100	591	200
442	150	492	100	542	100	592	200
443	200	493	100	543	100	593	200
444	200	494	100	544	100	594	200
445	200	495	100	545	100	595	200
446	100	496	100	546	100	596	200
447	100	497	100	547	100	597	200
448	100	498	100	548	100	598	200
449	200	499	100	549	200	599	200
450	200	500	100	550	200	600	200
451	200	501	100	551	200	601	200
452	100	502	100	552	200	602	200
453	100	503	200	553	200	603	200
454	50	504	200	554	100	604	200
455	50	505	200	555	100	605	200
456	100	506	200	556	100	606	200
457	100	507	200	557	100	607	200
458	200	508	100	558	100	608	200
459	200	509	100	559	100	609	200
460	200	510	100	560	100	610	200
461	200	511	100	561	100	611	200
462	200	512	200	562	100	612	200
463	200	513	200	563	100	613	200
464	100	514	200	564	100	614	200
465	100	515	200	565	100	615	200
466	100	516	100	566	100	616	200
467	100	517	100	567	100	617	200
468	100	518	100	568	100	618	200
469	100	519	100	569	100	619	200
470	100	520	100	570	100	620	200
471	150	521	100	571	100	621	200
472	100	522	100	572	100	622	200
473	100	523	100	573	200	623	200
474	100	524	100	574	200	624	200
475	100	525	100	575	200	625	200
476	100	526	100	576	200	626	200
477	100	527	100	577	200		
478	100	528	100	578	200		

Total issue of 1881 bonds £119,700

28 B.—*Form of the* 1881 *Bonds.*

Oregonian Railway Company, Limited.

We, the Oregonian Railway Company, Limited, incorporated under the companies acts, 1862, 1867, and 1877, grant us to have

No. —— of bonds called and to be called 1881 bonds.

borrowed and received from —— —— the sum of ——, which sum we bind and oblige ourselves to repay to the said —— —— or —— heirs or assignees, within our registered office at Dundee for the time being, at the term of Whitsunday, nineteen hundred and one, or upon such subsequent day as may hereafter be mutually agreed on, with a fifth part more of the said principal sum of liquidate penalty in case of failure and the interest of the said principal sum at the rate of six pounds per centum per annum from the date hereof to the term of payment before specified, and in the event of the said loan being continued as aforesaid at such rate thereafter for the period of such continuance as may be agreed on, and that at two terms in the year, Whitsunday and Martinmas, by equal portions, beginning the first term's payment of the said interest at the term of Martinmas next, for the proportion thereof which shall be due at that date, and the next payment of the same at the term of Whitsunday following for the half year immediately preceding, and so forth by equal payments at the said two terms, yearly, termly, and continually thereafter, so long as the said principal sum shall remain unpaid, with a fifth part more of each of the said termly payments of liquidate penalty in case of failure in the punctual payment thereof; declaring that as we have herewith delivered interest warrants or coupons for the interest to become due at the several terms prior to and at the term of payment before specified, we shall not be bound to make payment of interest during the currency of this loan except on delivery to us of the said interest warrants or coupons; and in security and for more sure payment of the sums of money above written, principal, interest, and penalties, and of these presents and of the interest warrants or coupons aforesaid, and in addition to the security for such payment granted or to be granted by a certain mortgage or deed of trust made or to be made by us, the said company, over and on our property and assets therein mentioned in the State of Oregon, in the United States of America, to Alexander Henderson, Esquire, merchant and manufacturer in Dundee, and others, as trustees for the securing of such payment, and of the payment of all other similar bonds or obligations and interest warrants or coupons, designated or to be designated therein, to be secured thereby, we, the said company, do hereby assign, convey, dispone, and make over to the said —— ——, being the creditor in these presents, and —— aforesaid, along with the whole other holders of bonds or deeds of security or interest warrants or coupons for the time being of us, the said company, granted or to be granted in terms similar to these presents, the property and assets of us, the said company, other than those conveyed to the creditors in and holders of our bonds called 1880 bonds, together with any unpaid capital of us, the said company, from time to time existing, in so far as the same shall not have been paid up for the time being, but exclusive of our original capital of one hundred and sixty thousand pounds, divided into sixteen thousand shares of ten pounds each, which original capital, so far as unpaid from time to time, has already

been conveyed to the creditors in or holders of said 1880 bonds; and declaring in terms of our articles of association that the respective holders of or other persons entitled to all deeds of security, in terms similar to these presents, granted or to be granted by us shall, proportionably, according to the amount of money secured thereby or contained therein, be entitled to be paid out of our said property and assets other than as aforesaid, and out of any unpaid capital aforesaid for the time, exclusive as aforesaid, the respective sums in such deeds of security mentioned, and the interest thereof, without any preference or priority one above another
29 by reason of priority of date of any such deed of security or otherwise howsoever; and we consent to the registration hereof for preservation and execution.

In witness whereof these presents are subscribed on behalf of us, the said company, by —— ——, —— ——, two of the ordinary directors of us, the said company, and by —— ——, the secretary of us, the said company, and are also sealed with the common seal of us, the said company, all at Dundee, on the — day of ——, in the year eighteen hundred and ——, before the following witnesses, viz:

—— ——, *Witness.*
—— ——, *Witness.*

[FOR SEAL.]

—— ——, } *Directors.*
—— ——, }
—— ——, *Secretary.*

[Seal of the Oregonian Railway Company, Limited.]

(Signed) THOMAS H. COX, *Director.*
(") JOHN LENG, *Director.*
(") DAVID FERGUSON, *Secretary.*

(Signed) A. WILSON, JR.,
Cashier to Messrs. Thomas Thornton, Son & Coy, solicitors, Dundee, witness.
(") JOHN SIMPSON, JR.,
Apprentice to Thomas Thornton, solicitor, Dundee, witness.

STATE OF OREGON, } ss:
Marion County, }

I, Mart. Chamberlin, clerk of Marion county, State of Oregon, do hereby certify that the foregoing instrument of writing was received and duly recorded by me in said county records, vol. 28 of Deeds, on pages 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, this December 17th, 1881.

Witness my hand and official seal affixed.

[SEAL.] (Signed) MART. CHAMBERLIN,
Co. Clerk.

30 STATE OF OREGON, } ss:
County of Linn, }

I certify that the within was received and duly recorded by me

in Linn county records, Book of Deeds, vol. Y, page 122, on the 9th day of January, 1882.

(Signed) N. BAUM,
County Clerk.

STATE OF OREGON, } ss:
Yamhill County, }

I, Jno. J. Spencer, county clerk in and for said county, do hereby certify that the foregoing instruments of writing were received for record at eight o'clock, the eighth day of February, 1882, and recorded on page 504 *et seq.* of Book "U" of Record of Deeds of said county.

Witness my hand and seal of office affixed.

[SEAL.] (Signed) JNO. J. SPENCER, *Clerk.*
By JNO. THOMPSON, *Deputy.*

STATE OF OREGON, } ss:
County Polk, }

I, M. M. Ellis, county clerk in and for said county, do hereby certify that the foregoing instruments of writing were received for record at nine o'clock a. m., the 20th day of February, 1882, and recorded on page 306 *et seq.* of Book 15 of Record of Deeds of said county.

Witness my hand and seal of office affixed.

[SEAL.] (Signed) M. M. ELLIS, *Clerk,*
By G. N. TOWNSEND, *Deputy.*

STATE OF OREGON, } ss:
County of Lane, }

I certify that the within was received and duly recorded by me in Lane county records, Book of Deeds, vol. "P," pages 28 to 55, inclusive, on the 4th day of March, 1882.

[SEAL.] (Signed) JOEL WARE,
County Clerk.

31 The defendant thereupon entered into possession of the railroad and the property in said indenture of lease mentioned and demised and duly paid the rent reserved therein at the half-yearly terms therein specified up to and including the 11th November, 1883, but has refused to pay the rent thereafter becoming due.

On the 11th day of November, 1884, an instalment of rent, amounting to fourteen thousand pounds sterling, became due and payable by defendant to plaintiff under the terms and provisions of said indenture of lease; but the defendant, though requested by the plaintiff to pay, has refused and still refuses to pay the same, and the same still remains due and unpaid.

The equivalent of the said fourteen thousand pounds sterling in money of the United States of America is $68,131.

The plaintiff claims $68,131.00, with lawful interest from the said 11th day of November, 1884, and the costs and disbursements of this action.

Wherefore plaintiff prays judgment against defendant for said sum of $68,131.00, with lawful interest thereon as aforesaid, and the costs and disbursements of this action.

WHALLEY, NORTHUP & DEADY,
Attorneys for Plaintiff.

UNITED STATES OF AMERICA, *District of Oregon,* } ss:

I, Edmund Robertson, being first duly sworn, say on oath that I am the attorney-in-fact of the plaintiff named in the foregoing complaint; that none of the officers of the plaintiff is within this State, which is the reason why I make this affidavit of verification. I further say that the foregoing complaint is true, as I verily believe.

EDMUND ROBERTSON.

Subscribed and sworn to before me this 9th day of February A. D. 1885.

[SEAL.] U. S. GRANT MARQUAM,
Notary Public for the State of Oregon.

Endorsed: Filed March 18, 1885. R. H. Lamson, clerk.

32 And afterwards, to wit, on the 18 day of March, 1885, there was issued out of said court a summons in words and figures as follows, to wit:

33 In the Circuit Court of the United States for the Ninth Judicial Circuit, District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, *vs.* THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1120. Summons.

The President of the United States to The Oregon Railway and Navigation Company, the above-named defendant, Greeting:

You are hereby commanded to be and appear in the above-entitled court, holden at Portland, in said district, and answer the complaint filed against you in the above-entitled action within ten days from the date of the service of this summons upon you if served within the county of Multnomah, in said district; or if served within any other county of said district, then within thirty days from the date of such service upon you; and if you fail so to appear and answer, for want thereof the plaintiff will take judgment against you for $68,131.00, with lawful interest thereon from November 11, 1884, and for the costs and disbursements of this action.

And this is to command you, the marshal of said district, or your deputy to make due service and return of this summons. Hereof fail not.

Seal of U. S. Circuit Court, Oregon.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, affixed at Portland, in said district, this 18th day of March, 1885.

R. H. LAMSON, *Clerk.*

[Endorsed:] No. 1120. In the circuit court of the United States for the district of Oregon. The Oregonian Railway Co., Limited, *vs.* O. R. & N. Co. Summons. Original endorsed: Returned and filed March 19, 1885. R. H. Lamson, clerk, by G. G. Gammans, deputy.

DISTRICT OF OREGON, *ss:*

I certify that on the 18th day of March, 1885, at Portland, Multnomah county, in said district, I duly served the within summons upon the therein-named defendant, The Oregon Railway and Navigation Company, by exhibiting said writ to C. H. Prescott, vice-pres't and manager, and by delivering to him personally a true copy of said writ duly certified to by me as U. S. marshal, together with a copy of the complaint in the within-entitled action duly certified to by the pl'ff's att'ys.

PENUMBRA KELLY,
United States Marshal,
By P. A. MARQUAM, JR., *Deputy.*

34 And afterwards, to wit, on the 27 day of March, 1885, there was duly filed in said court a motion to strike out parts of complaint in words and figures as follows, to wit:

35 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

Comes now the defendant herein and moves the court to strike out of the complaint in this action all that portion of the same beginning with the printed page numbered "13" and ending with the printed page numbered "20," the said matter consisting of schedules referred to in the pretended indenture of lease set forth in said complaint, and defendant so moves upon the ground that said portion of the complaint is irrelevant and redundant.

And defendant also moves to strike out of said complaint so much of the same as sets forth the indenture of lease alleged to have been entered into between plaintiff and defendant, on the ground that the same is redundant.

And defendant also moves to strike out of said complaint that portion of the first paragraph thereof which reads as follows: "and is recognized as a corporation so owning such railroad by the laws of this State," on the ground that the same is irrelevant and redundant.

And defendant also moves to strike out all and each of the following portions of said complaint:

1. All that portion which sets forth and alleges what purports to be the first subdivision of article 3 of defendant's articles of incorporation.

2. All that portion which sets forth and alleges what purports to

be the third subdivision of article 3 of defendant's articles of incorporation.

36 3. All that portion which sets forth and alleges what purports to be the fourth subdivision of article 3 of defendant's articles of incorporation.

4. All that portion which sets forth and alleges what purports to be the fifth subdivision of article 3 of defendant's articles of incorporation.

And defendant so moves as to each of the said several parts of said complaint on the ground that the same are and each of the same is irrelevant.

And defendant moves to strike out said complaint on the ground that the same is not verified as required by law.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

We hereby admit due services of the within motion by service upon me, at the city of Portland, Multnomah county, Oregon, this, — day of March, 1885, of a duly certified copy of the same.

WHALLEY, NORTHUP & DEADY,
Attorneys for Plaintiff.

Endorsed: Filed Mar. 27, 1885. R. H. Lamson, clerk, by G. G. Gammans, deputy.

37 And afterwards, to wit, on the 31 day of March, 1885, there was duly filed in said court a stipulation in words and figures as follows, to wit:

38 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.
} No. —. Action at Law.

It is hereby stipulated that on Friday, the 2nd day of April, A. D. 1885, at the coming in of the court or as soon thereafter as counsel can be heard, the motion of the defendant above named to strike out portions of the complaint of the plaintiff may be set for hearing before the court on the motion of said defendant and the said complaint.

WHALLEY, NORTHUP & DEADY,
Attorneys for the Plaintiff, The Or. Railway Co.
DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for the Defendant, The O. R. & N. Co.

Endorsed: Filed Mar. 31, 1885. R. H. Lamson, clerk, by G. G. Gammans, deputy.

39 And afterwards, to wit, on Friday, the 1 day of May, 1885, the same being the 10 judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

40 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1120.

MAY 1, 1885.

Now, at this day, comes the plaintiff in the above-entitled cause, by Mr. John W. Whalley, of counsel, and the defendant, by Mr. C. A. Dolph, of counsel, and said cause comes on to be heard upon the motion to strike out portions of the complaint herein, and is argued by counsel. On consideration whereof it is ordered that the said motion be, and the same is hereby, allowed, and that the plaintiff have ten days herefrom in which to file an amended complaint.

41 And afterwards, to wit, on the 6 day of May, 1885, there was duly filed in said court an amended complaint in words and figures as follows, to wit:

42 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant. } Action at Law. No. 1120.

The plaintiff for this its amended complaint, filed by leave of court, complains of the defendant above named, and for cause of action alleges—

That at all the times stated herein the said plaintiff was and now is a corporation duly organized and incorporated under the laws of Great Britain and is a citizen of Great Britain, and is the owner of a certain railroad and other property hereinafter described and mentioned, and that it always had and has power and authority under the law creating it and under the laws of this State to own and operate said railroad so owned by it, and to sell, lease, and dispose of the same.

That defendant at and prior to the date of the lease hereinafter mentioned was and now is a corporation duly organized and incorporated under the general laws of the State of Oregon, and is a citizen thereof, and that under and by its articles of incorporation it

had and has and took power, among other things, therein and thereby to construct and operate certain railroads, and "to purchase and consolidate with or lease or operate and maintain, on such terms as may be agreed upon, any railroad or railroads in Oregon, with its or their rolling stock, equipments or appurtenances, and to complete the same to its authorized terminus."

That on the 1st day of August, A. D. 1881, the plaintiff and the defendant, pursuant to resolutions of their respective boards
43 of directors and by and through the proper officers of each, duly made and executed in writing a certain indenture of lease under their respective corporate seals, in which and whereby the plaintiff demised to the defendant, for the term of ninety-six years from the 1st day of August, A. D. 1881, "the existing railroad," then owned by plaintiff, and commonly known as the narrow-gauge railroad, in the State of Oregon, together with certain equipments and appurtenances, and which in and by said lease is substantially as follows:

Consisting of two branches, namely, the east branch, beginning at or near Ray's Ferry and running south to Brownsville and extending, including sidings, to seventy-four miles or thereabouts, with a branch to Waldo, extending, including sidings, to five miles or thereabouts, and the west branch beginning at Ray's Ferry and running south to Monmouth, with branch to Sheridan, and extending in all, including sidings, to fifty-five miles or thereabouts, together with certain proposed extensions thereof, with all stations, depots, sidings, pumps, tanks, yards, warehouses, machine shops, and other works and conveniences, and the right of way thirty feet in width on each side from the center of the track of said railroad and the extension thereof, and the rolling stock of said railroad, with the — and all tools, machinery, implements, supplies, and equipments of every description, and all franchises, rights, powers, and privileges to which the said lessor was then entitled or to which it should at any time thereafter become entitled in connection with said railroad and said proposed extensions as aforesaid.

And in and by said indenture of lease the said plaintiff did reserve and the defendant did therein and thereby promise, covenant, and agree to pay to plaintiff an annual rental therefor of twenty-eight thousand pounds sterling money of Great Britain in
44 half-yearly payments of fourteen thousand pounds sterling each on the 15th day of May and the 11th day of November in each year, in advance, for and during said term aforesaid.

That defendant thereupon entered into possession of said demised property, and on the 11th day of November, 1884, an installment of rent amounting to fourteen thousand pounds sterling became due and payable to plaintiff by defendant under the terms of said lease and the covenants therein contained, which defendant failed and refused to pay, and which is now past due and owing from defendant to plaintiff, together with lawful interest thereon from and after the said 11th day of November, A. D. 1884; that the equivalent of said sum of fourteen thousand pounds sterling in lawful money of

the United States is the sum of sixty-eight thousand one hundred and thirty-one dollars.

Wherefore plaintiff prays for judgment against the defendant for said sum of sixty-eight thousand one hundred and thirty-one dollars, with lawful interest thereon from the said 11th day of November, A. D. 1884, and for the costs and disbursements of this action.

WHALLEY, NORTHUP & DEADY,
Attorneys for the Plaintiff.

UNITED STATES OF AMERICA, *District of Oregon*, } *ss:*

I, Hugh Roger, being first duly sworn, say that I am the agent and attorney-in-fact of the plaintiff named in the foregoing amended complaint; that none of the officers of the plaintiff are within the district of Oregon, which is the reason why I make this verification, and that the foregoing amended complaint is true, as I verily believe.

HUGH ROGER.

Subscribed and sworn to before me this 5th day of May, A. D. 1885.

[SEAL.] H. H. NORTHUP,
Notary Public for Oregon.

DISTRICT OF OREGON, *ss:*

Service of a certified copy of the foregoing amended answer admitted upon us, in said district, this 6th day of May, A. D. 1885, and all further service is hereby waived.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for the Defendant.

Endorsed: Filed May 6, 1885. R. H. Lamson, clerk.

45 And afterwards, to wit, on Monday, the 11 day of May, 1885, the same being the 14 judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

46 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1120.

MAY 11, 1885.

Now, at this day, comes the defendant in the above-entitled cause, by Mr. C. A. Dolph, of counsel, and upon motion thereof it is ordered that the said defendant have until June 1, 1885, to answer the amended complaint herein.

47 And afterwards, to wit, on the 30 day of May, 1885, there was duly filed in said court an answer to complaint in words and figures as follows, to wit:

48 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY.

The defendant answers to the complaint herein—

That it is not true and it denies that the plaintiff, pretending to be the Oregonian Railway Company, Limited, at any time was or is a corporation, or that it at any time was or is organized or incorporated under the laws of Great Britain or is a citizen of Great Britain, or is or at any time was the owner of that certain railroad or other property in the complaint mentioned and described, or that it at any time had or has power or authority, under the laws of this State or otherwise, to own or operate such railroad or to sell, lease, or dispose of the same.

Defendant admits that it is and at the times mentioned was a corporation duly incorporated under the laws of the State of Oregon, but defendant alleges that it is not true and it denies that it has or had or took, under or by its articles of incorporation or otherwise, power to construct or operate any railroad over the routes or route or lines or line in the complaint mentioned and described, or that it had or took or has power to purchase or consolidate with or lease, operate, complete, or maintain any railroad in Oregon, with or without its rolling stock, equipments, or appurtenances; and defendant alleges that the only railroad or roads which it was or is organized to construct or operate and the termini of which are specified in its articles of incorporation run east from the city of Portland, in the State of Oregon, and between points and places in the east-

49 ern part of said State, and do not embrace the roads or road mentioned in and alleged to be demised by plaintiff to defendant, nor any railroad running south from said city of Portland or between points or places south of said city; that the said road or roads alleged by plaintiff to have been demised by it to defendant are located wholly in the western part of said State and are confined to and extend between points south of the city of Portland aforesaid, and are entirely different roads, forming no part of and having no near connection with or relation to the road or system of roads which defendant is authorized to construct and maintain and the termini of which are mentioned in any of its articles of incorporation; that prior to the alleged execution of the said pretended lease the whole of defendant's capital stock had been contributed and applied in the construction and equipment of a railroad or railroads the termini of which were specified in its articles of incorporation and which were entirely different from and independant of the road or either of the roads mentioned in the complaint and alleged therein to have been

demised to defendant and had no near connection with or relation to any such road; that the stockholders of defendant never authorized or consented or assented to the said alleged indenture of lease or to the diversion of any of the defendant's capital, contributed as aforesaid, to new objects or enterprises not contemplated when said capital stock was contributed.

Defendant alleges that it is not true and it denies that — any time the plaintiff and defendant made or executed any indenture of lease, under their corporate seals or otherwise, or that plaintiff demised to the defendant the railroad or railroads, franchises, extensions, or other property described in the complaint or any "existing
50 railroad" or railroad, known as the narrow-gauge railroad, in the State of Oregon, or any equipments or appurtenances.

Defendant admits that about the year 1881 it entered into the possession of the said railroad alleged in the complaint to have been demised to defendant, but defendant alleges that long prior to the 11th day of November, 1884, and about the 15th day of May, 1884, defendant tendered and offered to restore to plaintiff the said property, and defendant was at all times, up to the — day of April, 1885, when upon the application of the plaintiff the said property was placed in the hands of a receiver, ready and willing and offered to restore such possession to it, but that plaintiff at all times refused to accept the same; that such property has remained in said receiver's hands since his appointment as aforesaid.

Defendant alleges that it is not true and it denies that any rental or sum of money whatever is due or owing from defendant to plaintiff under the terms of the said pretended lease or otherwise.

Wherefore defendant prays judgment for its costs and disbursements herein.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

DISTRICT OF OREGON, *ss:*

I, Theodore Wygant, being first duly sworn, say that I am secretary of the defendant, The Oregon Railway and Navigation Company; that the foregoing answer is true as I verily believe.

THEODORE WYGANT.

Subscribed and sworn to before me this 26th day of May, 1885.

C. A. FREEMAN, [SEAL.]
Notary Public in and for Oregon.

We hereby admit due service of the within answer upon us, at Portland, Oregon, this 30th day of May, 1885, by service of a duly certified copy thereof.

WHALLEY, BRONAUGH, NORTHUP & DEADY,
Attorneys for Plaintiff.

Endorsed: Filed May 30, 1885. R. H. Lamson, clerk.

51 And afterwards, to wit, on the 10 day of June, 1885, there was duly filed in said court motion to strike out parts of answer in words and figures as follows, to wit:

52 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

Plaintiff moves the court to strike out the following several portions of defendant's answer in this action upon the ground and for the reason that said portions of said answer are each and all frivolous, immaterial, and redundant, to wit;

1st. All that portion of said answer beginning with the words "and defendant," on line 13 of page 2, and extending to and including the word "incorporation," on line 9 of page 3 of said answer.

2d. Beginning with the words "that prior," on line 10 of page 3, and extending to and including the words "such road," on line 22 of the same page of said answer.

3d. Beginning with the word "that," on line 22 of page 3, and extending to and including — word "contributed," on line 29 of the same page of said answer.

4th. Beginning with the word "but," on line 17 of page 4, and extending to and including the word "aforesaid," on line 2 of page 5 of said answer.

5th. Beginning with the word "or," on line 19 of page 1, and extending to and including the word "Britain," on line 20, same page.

WHALLEY, BRONAUGH, NORTHUP & DEADY,
Attorneys for Plaintiff.

Due service of a copy of the within motion is this day acknowledged.

June 10, 1885.

DOLPH, BELLINGER, MALLORY & SIMON,
Def't's Att'ys.

Endorsed: Filed June 10, 1885. R. H. Lamson, clerk.

53 And afterwards, to wit, on the 10 day of June, 1885, there was duly filed in said court a demurrer to answer in words and figures as follows, to wit:

54 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

And now comes the plaintiff, by attorney, and demurs to so much of the answer of defendant herein as pleads to or denies the corporate

existence — due organization of plaintiff as a corporation or facts relating to the organization of plaintiff as a corporation or which pleads to questions or denies compliance by plaintiff with foreign or domestic law or which attempts to deny the demise alleged in the complaint by plaintiff to defendant, and also to so much of said answer as pleads to or denies or attempts to plead to or deny or questions the powers, authority, rights, privileges, franchises, or ownership of plaintiff alleged in the complaint herein, for the reason that defendant ought not to be allowed or heard to say or allege that plaintiff is not a corporation or has no power to make the contract herein sued on or to make any denial contrary to defendant's own acknowledgement and deed of about August 1, 1881, as appears by said complaint and admitted by said answer.

2d. And plaintiff also demurs to so much of said answer as by plea attempts to set up want of power and authority in defendant corporation and its officers to enter into the contract alleged in the complaint herein, and for cause of demurrer thereto says that upon the face of the matter alleged in said plea it appears that the same does not constitute a defense or counter-claim to said action.

WHALLEY, BRONAUGH, NORTHUP & DEADY,
Attorneys for Plaintiff.

55 Due service of copy of the within demurrer is this day acknowledged.

June 10, 1885.

DOLPH, BELLINGER, MALLORY & SIMON,
Def't's Att'ys.

Endorsed: Filed June 10, 1885. R. H. Lamson, clerk.

56 And afterwards, to wit, on the 3 day of July, 1885, there was duly filed in said court a notice in words and figures as follows, to wit:

57 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

To the above-named defendant and to Messrs. Dolph, Bellinger, Mallory and Simon, its attorneys:

Take notice that on the 8th day of July, A. D. 1885, at the hour of 10 o'clock a. m. of said day, or as soon thereafter as counsel can be heard, the above-named plaintiff will, by its counsel, move the above-entitled court, at the U. S. court-room, in Portland, Multnomah county, Oregon, to set down for hearing at a time certain the demurrer and the motion to strike out interposed to the answer of the defendant herein.

Dated this 3d July, 1885.

WHALLEY, BRONAUGH, NORTHUP & DEADY,
Att'ys for Plaintiff.

Due service of the within notice admitted on us, at Portland, Multnomah county, Oregon, on this July 3, 1885.

DOLPH, BELLINGER, MALLORY & SIMON.

Endorsed: Filed July 3, 1885. R. H. Lamson, clerk.

58 And afterwards, to wit, on Wednesday, the 8th day of July, 1885, the same being the 39 judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

59 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1120.

JULY 8, 1885.

Now, at this day, on motion of Mr. J. W. Whalley, of counsel for plaintiff, it is ordered that the demurrer filed to the answer herein be, and the same is hereby, set for hearing on Friday, July 10, 1885.

60 And afterwards, to wit, on Wednesday, the 15th day of July, 1885, the same being the 42 judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

61 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1120.

JULY 15, 1885.

This cause was heard on the motion to strike out parts of defendant's answer herein and upon the demurrer to said answer, and was argued by Mr. E. C. Bronaugh, of counsel for plaintiff, and by Mr. C. B. Bellinger, of counsel for defendant; on consideration whereof it is ordered that said motion be, and the same is hereby, allowed, and that said demurrer be, and the same is hereby, overruled, with leave to plaintiff to amend its complaint within ten days.

62 And afterwards, to wit, on the 16 day of July, 1885, there was duly filed in said court a motion in words and figures as follows, to wit:

63 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff, *vs.* THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant. } At Law. No. 1120.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff, *vs.* THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant. } At Law. No. 1143.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff, *vs.* THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant. } At Law. No. 1147.

Now comes the defendant and moves the court that all these actions be consolidated into one, and for such further or other order as may be just.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Def't.

Due service of a copy of the foregoing motion is hereby acknowledged this the 15th day of July, 1885.

WHALLEY, BRONAUGH, NORTHUP & DEADY,
Att'ys for Plaintiff.

Endorsed: Filed July 16, 1886. R. H. Lamson, clerk, by R. B. Lamson, deputy.

64 And afterwards, to wit, on Monday, the 20 day of July, 1885, the same being the 44 judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

65 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, *vs.* THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1120.

JULY 20, 1885.

This cause was heard on the motion to consolidate this cause with cause No. 1143, The Oregonian Railway Company, Limited, *vs.* The

Oregon Railway and Navigation Company, and cause No. 1147, The Oregonian Railway Company, Limited, *vs.* The Oregon Railway and Navigation Company, and was argued by Mr. E. C. Bronaugh, of counsel for the plaintiff, and by Mr. C. B. Bellinger, of counsel for the defendant; on consideration whereof it is ordered that the motion be, and the same is hereby, denied.

66 And afterwards, to wit, on the 22 day of July, 1885, there was duly filed in said court a second amended complaint in words and figures as follows, to wit:

67 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff, *vs.* THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant. } Action at Law. No. 1120.

Plaintiff, for second amended complaint against the defendant in the above-entitled action, filed by leave of court, alleges—

That at all the times hereinafter stated the plaintiff was and now is a corporation duly created, established, incorporated, and organized under the laws of Great Britain and Ireland and under that law of Great Britain commonly known as "the companies act, 1862," and is a citizen of Great Britain, and is the owner of that certain railroad and other property in the State of Oregon hereinafter mentioned and described, and has its principal office at Dundee, in Scotland.

That in and by its articles of incorporation and memorandum of association the plaintiff took and had and has power to own, operate, and lease said railroad and other property, and that in and by its memorandum of association one of the objects for which the plaintiff was and is incorporated and established is expressed and declared to be "the building, constructing, reconstructing, diverting, equipping, owning, operating, leasing, or selling, transferring, or disposing of, purchasing or otherwise acquiring, holding, and operating or otherwise using, working, or dealing in all or any such railway or railways, railroad or railroads, in the State of Oregon and the Territory of Washington, in the United States of America, or in either of them, or between such points in said State or Territory, or elsewhere in North America, as may from time to time be
68 resolved or determined upon by said company, and the carrying of passengers, goods, and mineral and all other traffic and freight on and the doing and performing of all other acts, deeds, and other operations connected with railways and railroads in the said State and Territory or either of them, or elsewhere in North America."

That defendant at all the times hereinafter mentioned was and now is a corporation duly incorporated and organized under the

general incorporation laws of the State of Oregon and is a citizen of said State and has its principal office at Portland, in Multnomah county, in said State, and that in and by its articles of incorporation the defendant took and had and has power to lease and operate the said railroad and other property hereinafter mentioned, and that one of the objects for which defendant was and is so incorporated is specified in its articles of incorporation aforesaid to be—

"To purchase or consolidate with, lease, or operate and maintain, on such terms as may be agreed upon, any railroad or railroads in Oregon, Washington, Idaho, or Utah, with its or their rolling stock, equipments, or appurtenances, and to complete the same to its authorized terminus."

That prior to the making and execution of the indenture of lease hereinafter mentioned the board of directors of the plaintiff corporation did adopt and pass a resolution, in and by which the said plaintiff corporation was authorized and directed by its proper officers and agents to sign and affix its corporate seal unto, acknowledge and deliver such indenture of lease, and that the board of directors of the defendant corporation in like manner, prior to the making and execution of said indenture of lease, did pass a resolution in and by which the defendant corporation was authorized and directed by its proper officers and agents to sign
69 and affix its corporate seal unto such indenture of lease and to acknowledge and deliver the same; and that thereupon and thereafter and as of the 1st day of August, A. D. 1881, the said plaintiff and defendant corporations did each enter into, in writing, and, by its proper officers and agents, sign and affix its corporate seal unto, acknowledge, and deliver a certain indenture of lease, bearing date the said 1st day of August, 1881, in which it was and is expressed and stated that "the parties hereto, pursuant to resolutions of their respective boards of directors, duly authorizing the same, have caused these presents, executed in duplicate, to be sealed with their respective corporate seals, and the said Oregonian Railway Company, Limited, has likewise caused these presents to be signed by two of its ordinary directors and by its secretary, and the said Oregon Railway and Navigation Company has likewise caused these presents to be signed by its president and by its assistant secretary the day and year above written."

And plaintiff alleges that said indenture of lease was so signed and sealed, and that therein and thereby, for the consideration therein mentioned, the plaintiff did demise to the defendant for the term of ninety-six years from said 1st day of August, A. D. 1881, the "existing railroad" then owned by plaintiff and commonly known as the narrow-gauge railroad, in the State of Oregon, together with certain equipments and appurtenances, and which, in and by said lease, is substantially as follows:

"Consisting of two branches, namely, the east branch, beginning at or near Ray's Ferry and running south to Brownsville and extending, including sidings, to seventy-four miles or thereabouts, with a branch to Waldo, extending, including sidings, to five miles or thereabouts, and the west branch, beginning at Ray's Ferry and

running south to Monmouth, with branch to Sheridan, and
70 extending in all, including sidings, to fifty-five miles or thereabouts," together with certain proposed extentions thereof, with all stations, depots, sidings, pumps, tanks, yards, warehouses, machine shops, and other works and conveniences, and the right of way thirty feet in width on each side from the center of the track of said railroad and the extensions thereof, and the rolling stock of said railroad, with all tools, machinery, implements, supplies, and equipments of every description, and all franchises, rights, powers, and privileges to which the said lessor was then entitled, or to which it should at any time thereafter become entitled in connection with said railroad and said proposed extensions as aforesaid.

That in and by said lease the said plaintiff did reserve and the defendant did therein and thereby promise, covenant, and agree to pay to plaintiff an annual rental for the said railroad and other property in said lease mentioned of twenty-eight thousand pounds sterling money of Great Britain in half yearly payments of fourteen thousand pounds sterling each on the 15th day of May and the 11th day of November, in each year, in advance, for and during said term.

That defendant thereupon entered into possession of said demised property, and on the 11th day of November, 1884, an installment of rent amounting to fourteen thousand pounds sterling became due and payable from defendant to plaintiff under the terms of said lease and the covenants therein contained, which defendant failed and refused to pay and which is now past due, and which is still owing and unpaid by defendant to plaintiff, together with lawful interest thereon from and after said 11th day of November, 1884.

That the equivalent of said sum of fourteen thousand pounds sterling in lawful money of the United States is the sum of
71 sixty-eight thousand one hundred and thirty-one dollars.

Wherefore plaintiff prays judgment against said defendant for the sum of $68,131 with interest thereon from the 11th day of November, 1884, at legal rate of interest, and for the costs and disbursements of this section.

WHALLEY, BRONAUGH, NORTHUP & DEADY,
Attorneys for the Plaintiff.

UNITED STATES OF AMERICA, *District of Oregon*, } ss:

I, Hugh Roger, being duly sworn, say on oath that I am the attorney-in-fact of the above-named plaintiff and its agent; that the foregoing second amended complaint is true as I verily believe; that the reason I make this verification is that none of the officers of the plaintiff corporation are now in the district of Oregon.

HUGH ROGER.

Subscribed and sworn to before me this July 22, 1885.

PAUL R. DEADY,
United States Circuit Court Commissioner for the District of Oregon.

Due acceptance of service of a certified copy of the foregoing 2d amended complaint is acknowledged this 22d day of July, 1885.

C. B. BELLINGER,
Att'y for Def't.

Endorsed: Filed July 22, 1885. R. H. Lamson, clerk.

72 And afterwards, to wit, on the 1 day of August, 1885, there was duly filed in said court a demurrer in words and figures as follows, to wit:

73 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.
Action at Law. No. 1120.

Defendant demurs to the second amended complaint herein upon the ground that said complaint does not state facts sufficient to constitute a cause of action.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

I hereby certify that I am one of defendant's attorneys in the above action, and that in my opinion the foregoing demurrer is well founded in law.

C. B. BELLINGER.

UNITED STATES OF AMERICA, *District of Oregon.*

Due service of a copy of the within demurrer is hereby acknowledged, at Portland, Oregon, this 1st day of August, 1885.

J. W. WHALLEY,
Of Att'ys for Pl'ff.

Endorsed: Filed Aug. 1, 1885. R. H. Lamson, clerk.

74 And afterwards, to wit, on the 1 day of August, 1885, there was duly filed in said court a motion in words and figures as follows, to wit:

75 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY Defendant.
Action at Law. No. 1120.

Defendant moves the court to strike out the following portions of

plaintiff's second amended complaint in this action upon the ground that the same are irrelevant and redundant:

All that portion beginning with the words "and that" in the 3rd line of the last paragraph on page 1 and extending to and including the last line of said paragraph, said last line being line 6 on page 2 of said complaint.

All that portion beginning with the first line of said last paragraph on said page one and extending to and including the last line thereof, said last line being line 6 on page 2 of said complaint.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

UNITED STATES OF AMERICA, }
District of Oregon. }

Due service of a copy of the within motion is hereby acknowledged, at Portland, district of Oregon, this 1st day of August, 1885.

J. W. WHALLEY,
Of Pl'ff's Att'ys.

Endorsed: Filed August 1, 1885. R. H. Lamson, clerk.

76 And afterwards, to wit, on Wednesday, the 4 day of Nov., 1885, the same being the 19 judicial day of the regular October term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

77 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, }
vs. } No 1120.
THE OREGON RAILWAY AND NAVIGATION COMPANY. }

NOVEMBER 4, 1885.

This cause was heard on the demurrer to the complaint herein, and was argued by Mr. J. W. Whalley, of counsel for plaintiff, and by Mr. C. B. Bellinger, of counsel for defendant. On consideration whereof it is ordered that said demurrer be, and and the same is hereby, sustained, and that plaintiff have five days in which to amend its complaint.

78 And afterwards, to wit, on the 7 day of Nov., 1885, there was duly filed in said court an amended complaint in words and figures as follows, to wit:

79 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.
} Action at Law. No. 1120.

Plaintiff for amended complaint against the defendant in the above-entitled action, by leave of the court, alleges—

That at all the times hereinafter stated plaintiff was and now is a foreign corporation duly created, incorporated, and organized under the laws of Great Britain and Ireland under the act of Parliament commonly known as the "companies act, 1862," and is a citizen of Great Britain, and is the owner of that certain railroad and other property in the State of Oregon hereinafter mentioned and described, and has its principal office at Dundee, in Scotland.

That by section 6 of said "companies act" it was and is provided that "any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requisitions of this act in respect of registration, form an incorporated company with or without limited liability."

That on or about the 30th day of April, A. D. 1880, more than seven persons did subscribe their names to a memorandum of association, and did otherwise comply with the requisitions of said "companies act, 1862," in respect of registration, and did thereby form plaintiff an incorporated company with limited liability.

That under and by the said law of its creation and the said memorandum of association the plaintiff took and acquired and had and has power, among other things, to construct, own, operate, and lease railroads in Oregon, including the said railroad and other
80 property hereinafter mentioned, and that in and by said memorandum of association one of the objects and purposes for which plaintiff was and is incorporated and organized is expressed and declared to be "the building, constructing, reconstructing, diverting, equipping, owning, operating, leasing or selling, transferring or disposing of, or purchasing or otherwise acquiring, holding, and operating, or otherwise using, working, or dealing in all or any such railway or railways, railroad or railroads, in the State of Oregon and the Territory of Washington in the United States of America, or in either of them, or between such points in said State or Territory, or elsewhere in North America, as may from time to time be resolved or determined upon by said company, and the carrying of passengers, goods, and mineral, and all other traffic and freight on, and the doing and performing of all other acts, deeds, and other operations connected with railways and railroads in the said State and Territory, or either of them, or elsewhere in North America," and that after such incorporation of plaintiff the State of

Oregon recognized by law this plaintiff as a duly incorporated and existing foreign corporation having said powers, and did consent to the exercise of such powers by plaintiff within the limits of this State.

That the defendant at all the times hereinafter mentioned was and now is a corporation duly incorporated and organized under the general incorporation laws of the State of Oregon, and is a citizen of said State, and has its principal office at the city of Portland, in Multnomah county, in said State.

That in and by its articles of incorporation the defendant took and had and has power to operate and lease the said railroad and other property hereinafter mentioned, and that one of the objects
81 and purposes for which defendant was and is so incorporated is specified in its said articles of incorporation to be "to purchase or consolidate with, or lease or operate and maintain, on such terms as may be agreed upon, any railroad or railroads in Oregon, Washington, Idaho, or Utah, with its or their rolling-stock equipments or appurtenances, and to complete the same to its authorized terminus."

That prior to the making and execution of the indenture of lease hereinafter mentioned the board of directors of the plaintiff corporation did adopt and pass a resolution in and by which the plaintiff corporation was authorized and directed to sign, by its proper officers and agents, and to affix the corporate seal unto and acknowledge and deliver such indenture of lease, and that the board of directors of the defendant corporation did in like manner, prior to the making and execution of said lease, pass a resolution in and by which said defendant corporation was authorized and directed to sign, by its proper officers and agents, and to affix its corporate seal unto and acknowledge and deliver such indenture of lease, and that thereupon and thereafter and as of the 1st day of August, A. D. 1881, the said corporations, plaintiff and defendant, did agree upon and cause to be prepared in writing a certain indenture of lease bearing date the said 1st day of August, A. D. 1881, and the proper officers and agents of the plaintiff corporation did duly sign the same on plaintiff's behalf and did affix thereunto the plaintiff's corporate seal and did duly acknowledge such execution by them of such indenture of lease as the act and deed of the plaintiff, and the proper officers and agents of the defendant corporation did also duly sign the said indenture of lease on defendant's behalf and did affix thereunto the defendant's corporate seal and did duly acknowledge such execution by them of said indenture of lease
82 as the act and deed of the defendant, and the said indenture of lease was thereupon duly delivered by each of said corporations to the other, as directed by said resolutions.

That in and by said indenture of lease the plaintiff, for certain good and valuable considerations therein mentioned, did demise and let to the defendant for the term of ninety-six years from said 1st day of August, A. D. 1881, the "existing railroad" then owned by plaintiff and commonly known as the narrow-gauge railroad, in the State of Oregon, together with certain equipments and appurte-

nances, and which in and by said lease is substantially as follows: "Consisting of two branches, namely, the East Branch, beginning at or near Ray's Ferry and running south to Brownsville and extending, including sidings, to seventy-four miles or thereabouts, with a branch to Waldo, extending, including sidings, to five miles or thereabouts; and the West Branch, beginning at Ray's Ferry and running south to Monmouth, with branch to Sheridan, and extending in all, including sidings, to fifty miles or thereabouts," together with certain proposed extensions thereof, with all stations, depots, sidings, pumps, tanks, yards, warehouses, machine shops, and other works and conveniences, and the right of way thirty feet in width on each side from the center of the track of said railroad and the extensions thereof, and the rolling stock of said railroad, with all tools, machinery, implements, supplies, and equipments of every description, and all franchises, rights, powers, and privileges to which the said lessor was then entitled or to which it should at any time thereafter become entitled in connection with said railroad and said proposed extension as aforesaid.

That in and by said indenture of lease the said plaintiff
83 did reserve and the defendant did therein and thereby promise, covenant, and agree to pay to plaintiff an annual rental for the said railroad and other property in said lease mentioned of twenty-eight thousand pounds sterling money of Great Britain in half-yearly payments of fourteen thousand pounds sterling each on the 15th day of May and the 11th day of November in each year, in advance, for and during said term.

That defendant thereupon entered into the possession of said property, and that on the 11th day of November, A. D. 1884, an installment of rent amounting to fourteen thousand pounds sterling, became due and payable to plaintiff from defendant under the terms of said lease and the covenants therein contained, which installment of rent last mentioned the defendant failed and refused to pay and the same still remains and now is due and owing and unpaid by defendant to plaintiff, together with lawful interest thereon from and after the said 11th day of November, A. D. 1884.

That the equivalent of said sum of fourteen thousand pounds sterling is in lawful money of the United States the sum of sixty-eight thousand one hundred and thirty-one dollars.

Wherefore plaintiff prays judgment against said defendant for the sum of $68,131.00 and interest thereon from the 11th day of November, 1884, and for the costs and disbursements of this action.

WHALLEY, BRONAUGH, NORTHUP & DEADY,
Attorneys for Plaintiff.

STATE OF OREGON, }
Multnomah County, } ss:

I, Hugh Roger, being duly sworn, say on oath that I am the managing agent of the above-named corporation, The Oregonian Railway Company, Limited, and that the foregoing complaint is true, as I verily believe.

HUGH ROGER.

Subscribed and sworn to before me this 7 day of November, A. D. 1885.

[SEAL.] U. S. GRANT MARQUAM,
Notary Public for Oregon.

Due service by certified copy of the within amended complaint is hereby acknowledged this Nov. 7, 1885.

DOLPH, BELLINGER, MALLORY & SIMON,
Att'ys for Defendant.

Endorsed: Filed Nov. 7, 1885. R. H. Lamson, clerk, by R. B. Lamson, deputy.

84 And afterwards, to wit, on the 16 day of Nov., 1885, there was duly filed in said court an answer to amended complaint in words and figures as follows, to wit:

85 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

Defendant answers to plaintiff's amended complaint herein—

That it is not true and defendant denies that plaintiff at any time was or is a foreign corporation or is at all a corporation or is created, incorporated, or organized under the laws of Great Britain and Ireland known as the companies act of 1862 or under any laws or law, whether of Great Britain and Ireland or otherwise, or is a citizen of Great Britain or is the owner of that certain railroad or other property mentioned in the complaint or has its principal or any office at Dundee, in Scotland.

That it is not true and defendant denies that about the 30th of April, 1880, or at any time any number of persons subscribed their names to a memorandum of association or did otherwise comply with the requisitions of said companies act of 1862 or did thereby or by any act form plaintiff an incorporated company.

That it is not true and defendant denies that under or by virtue of any law or memorandum of association plaintiff took or acquired or had or has power to construct, own, operate, or lease the railroad mentioned in the complaint or any railroad or other property in Oregon, or that it has any memorandum of association; and defendant alleges that the plaintiff has never specified in any articles or memorandum of association or otherwise the termini of the railroad or roads so mentioned; that as to whether any pretended memorandum of association of plaintiff sets forth as an object or purpose for which plaintiff pretends to be incorporated the

86 matter and things in the complaint set forth defendant has not knowledge or information sufficient to form a belief; and

defendant denies that the State of Oregon at any time recognized by law or otherwise the plaintiff as a duly existing or incorporated foreign or other corporation or as having any of the powers in the complaint mentioned, or that it consented to the exercise of any such powers within the State, and as to the pretended powers of plaintiff defendant alleges that the laws of Great Britain, under which plaintiff pretends to be incorporated, provide with reference to corporations formed thereunder that the memorandum of association and the articles of association, where such articles are required, shall set forth, among other things, "the objects for which the proposed company is to be established," and that upon compliance with certain provisions of said laws the subscribers to said memorandum and articles shall thereupon be a body corporate capable of exercising all the functions of an incorporated company having perpetual succession and a common seal, with power to hold land; and defendant alleges that there is no other or further provision of the said laws relating to the powers of or conferring power upon corporations created or existing thereunder.

That it is not true and defendant denies that, in or by its articles of incorporation or at all, defendant took or had or has power to operate or lease the railroad or other property in the complaint mentioned; and defendant alleges that the only road or roads which it was organized to own or operate or which it ever had or has power to own or operate, and which are mentioned in its articles of incorporation, extend east from the city of Portland, Oregon, and between points in the eastern part of said State and Washington Territory and do not include or form any near connection with the
87 said road or roads referred to in the complaint and therein alleged to have been demised to defendant; that said road or roads so alleged to have been demised extend south from said city and between points wholly south thereof, and are distant from the nearest point about thirty miles from said city; and defendant further alleges that the whole of its capital stock was contributed for and applied in the construction and equipment of said roads so mentioned as aforesaid in its articles of incorporation, and running east from the said city of Portland and between points in the eastern part of said State and Washington Territory.

That as to whether the pretended board of directors of plaintiff did adopt or pass a resolution authorizing the signing or sealing or acknowledging by plaintiff of the pretended indenture of lease in the complaint mentioned defendant has not knowledge or information sufficient to form a brief; that it is not true and defendant denies that defendant's board of directors did at any time pass a resolution in or by which defendant was authorized or directed to sign or to affix its corporate seal unto or acknowledge or deliver such or any indenture of lease; and defendant denies that at any time the plaintiff and defendant or either of them did agree upon or cause to be prepared the alleged indenture of lease, or that such alleged or any indenture of lease was signed by plaintiff or defendant or by the proper officers of either, or that the corporate seal of plaintiff or defendant was by any authority of the board of

directors of plaintiff or defendant affixed to said pretended lease, or that the same was duly acknowledged by either plaintiff or defendant, and as to said matters defendant alleges that at the time of the pretended passage of the said resolutions defendant's board of directors was composed of eleven persons or
88 members and so had been at all times prior thereto; that four of said members assumed to hold a special meeting of said board; that at said pretended meeting said four members assumed to pass a resolution authorizing and directing the execution on behalf of defendant of the said pretended lease; that said resolution is the same mentioned in the complaint herein as having been passed by defendant's board of directors authorizing and directing said alleged contract of lease, and the action of said four directors in assuming to pass said resolution is the action relied upon by plaintiff as constituting the passage of the said pretended resolution in the complaint mentioned; that no other resolution was passed or pretended so to be authorizing or directing any of the officers of defendant to sign, execute, seal, or acknowledge or deliver or to in any manner execute said pretended lease; that said pretended meeting was not a regular or stated meeting of said board, but was a special meeting, so far as it could at all be a meeting.

That there were only four of the members of defendant's said board present or voting or represented thereat, and defendant alleges that no notice of the object for which said pretended meeting was to be held was given to the members of said board.

That it is not true and defendant denies that in and by any indenture of lease plaintiff demised or let to defendant for any term the property in the complaint mentioned; and defendant alleges that at the time of the pretended execution of the said alleged lease the principal office of defendant was in Portland, Oregon; that one Henry Villard was president of defendant, and one Trolius Tyndale was its assistant secretary; that said Villard, acting solely upon the authority of the said pretended resolution and without any authority or direction whatever from defendant, being at that time in the city of New York, signed defendant's name to the said
89 pretended indenture of lease, and the said Tyndale, at the same place and acting upon the same authority, attached thereto defendant's corporate seal, which acts constitute the pretended execution by defendant of the alleged lease in the complaint mentioned and relied upon; that the stockholders of defendant did not at any time ratify, approve, or confirm the said acts of said Villard and Tyndale or the said pretended demise.

That it is not true and defendant denies that by said alleged indenture of lease or otherwise plaintiff reserved or defendant promised, covenanted, or agreed to pay plaintiff the annual rental of twenty-eight thousand pounds sterling or any sum whatever, or that any installment of rent or any sum of money at any time became due or payable to plaintiff from defendant under the terms of the said pretended lease or the covenants thereof or otherwise.

Defendant admits that it entered into the possession of the property in the complaint mentioned about the time therein stated, and

that it continued in such possession until the 15th day of May, 1884; that on the said 15th day of May it offered to restore all the said before-mentioned property to plaintiff and requested plaintiff to receive the same; that defendant had theretofore fully paid to plaintiff for the use and occupation of said property up to said date and in full of all claims and demands arising upon or claimed to be due under the said pretended lease to said date; that thereupon plaintiff requested defendant to continue in the possession of said property and operation of said road for the further period of six months to prevent losses and embarrassments that might result to plaintiff from discontinuing such operation; whereupon it was mutually agreed between plaintiff and defendant that to prevent such losses and embarrassments defendant would continue in the
90 possession of said property and in the operation of said road for the further period of six months from that date, so far as the same could be done without serious loss to defendant; that it was a stipulation of said agreement that defendant by so complying with plaintiff's request should incur no legal obligation nor be in any way prejudiced in respect to any claim that might be made against defendant in respect to said pretended lease; that thereupon and in compliance with said request and agreement and not otherwise defendant continued in the possession of said property and in the operation of said road until the 5th of November, 1884, when the plaintiff brought its suit in equity in the circuit court of the United States for the district of Oregon against defendant to compel a specific performance of certain of the covenants in said pretended lease; that upon the bringing of said suit and upon the motion of plaintiff an order was made therein enjoining defendant from ceasing to operate said road until the further order of said court; that thereafter and while said order was in force, on plaintiff's motion therein, one Scott was appointed a receiver of the said road and property in said suit; that said Scott thereupon duly qualified and entered upon and took possession of said road and property, which possession he has since had and now has; that the said sum of fourteen thousand pounds sterling for which judgment is prayed for in this action is upon a demand for rental under the said pretended lease for the six months beginning November 11th, 1884, during which said receiver was in possession of and operating said road under the said order so made in said suit.

For a further and separate defense herein defendant alleges that on the 29th day of July, 1885, in an action then pending in the circuit court of the United States for the district of Oregon between the plaintiff, The Oregonian Railway Company, Limited, and
91 the defendant, The Oregon Railway and Navigation Company, and for the same cause of action as that set forth in the complaint herein, judgment was duly rendered and given in favor of plaintiff and against the defendant in the sum of four thousand and twenty-eight and $\frac{32}{100}$ dollars, with interest at the rate of eight per cent. per annum, together with costs and disbursements, taxed at $27.52.

That thereafter and on the — day of August, 1885, defendant fully paid and satisfied the said judgment.

Wherefore defendant prays judgment for its costs and disbursements herein.

DOLPH, BELLINGER, MALLORY & SIMON,
Att'ys for Defendant.

DISTRICT OF OREGON, }
County of Multnomah. }

I, Theodore Wygant, being first duly sworn, say I am the secretary of the defendant, and that I believe the foregoing answer to be true.

THEODORE WYGANT.

Subscribed and sworn to before me this 16th day of November, 1885.

[SEAL.]

N. D. SIMON,
Notary Public in & for Oregon.

DISTRICT OF OREGON, }
County of Multnomah, } *ss:*

Due service of the within answer is hereby accepted, at Portland, Oregon, this 16th day of November, 1885, by receiving a copy thereof, duly certified to as such by C. B. Bellinger, of counsel for def't.

WHALLEY, B., N. & DEADY,
Attorneys for Pl'ff.

F. W. Baltes & Co., law printers. Briefs a specialty.

Endorsed: Filed November 16, 1885. R. H. Lamson, clerk, by R. B. Lamson, deputy.

92 And afterwards, to wit, on the 20 day of Nov., 1885, there was duly filed in said court a motion to strike out in words and figures as follows, to wit:

93 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant. } No. 1120.

Now, on this day, comes the plaintiff above named, by its attorneys, and moves the court to strike out the following portions of the answer of the defendant in this cause upon the ground and for the reason that such portions of said answer are and each of said portions is sham, frivolous, irrelevant, immaterial, and redundant, to wit:

1st. The words "or is a citizen of great Britain," on lines 24 and 25 of page 1 of said answer.

2nd. Beginning with the words "and defendant," on line 21 of page 2, and extending to and including the word "mentioned," on line 26 of said page 2 of said answer.

3rd. Commencing with the word "that," on line 26 of page 2, and extending to and including the word "belief," on line 6 of page 3 of said answer.

4th. Commencing with the word "and," on line 16 of page 3, and extending to and including the word "thereunder," on line 14 of page 4 of said answer.

5th. Commencing with the word "that," on line 15 of page 4, and extending to and including the word "mentioned," on line 20 of said page 4 of said answer.

6th. Commencing with the word "that," on line 7 of page 5, and extending to and including the word "city," on line 14 of said page 5 of said answer.

7th. Commencing with the word "and," on line 14 of page
94 5, and extending to and including the word "territory," on line 24 of page 5 of said answer.

8th. Commencing with the word "that," on line 25, page 5, and extending to and including the word "belief," on line 6 of page 6 of said answer.

9th. Commencing with the word "the," on line 27 of page 8, and extending to and including the word "that," on line 1 of page 9 of said answer.

10th. Commencing with the word "being," on line 8 of page 9, and extending to and including the word "York," on line 9 of said page 9 of said answer.

11th. The words "at the same place and," on lines 12 & 13 of page 9 of said answer.

12th. Commencing with the word "that," on line 19 of page 9, and extending to and including the word "demise," on line 24 of said page 9 of said answer.

13th. Commencing with the word "that," on line 18 of page 10, and extending to and including the word "same," on line 22 of said page 10 of said answer.

14th. Commencing with the word "that," on line 2 of page 11, and extending to and including the word "suit," on line 9 of page 13 of said answer.

WHALLEY, BRONAUGH, NORTHUP & DEADY,
Attorneys for Plaintiff.

STATE OF OREGON, } ss:
County of Multnomah, }

Due service of a certified copy of the within motion is hereby accepted, at Portland, Oregon, this 20 day of Nov., 1885, by receiving a copy thereof, duly certified to as such by Paul R. Deady, of counsel for plaintiff.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

Endorsed: Filed Nov. 20, 1885. R. H. Lamson, clerk, by R. B. Lamson, deputy.

95 And afterwards, to wit, on the 24 day of Nov., 1885, there was duly filed in said court a demurrer to answer in words and figures as follows, to wit:

96 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

Now comes the plaintiff above named, by attorneys, and demurs to the following portions of the answer of the defendant to plaintiff's second amended complaint herein, namely: 1st, to all that portion of said answer wherein the defendant pleads to or denies the corporate existence or due incorporation and organization of plaintiff as a corporation or facts relating thereto, or which pleads to or questions or denies compliance by plaintiff with foreign or domestic laws in the matter of plaintiff's incorporation and organization, or pleads to or denies or attempts to plead to or deny or question the powers, rights, privileges, or franchises or ownership of plaintiff alleged in said complaint, for the reason that the said defendant ought not to be allowed or heard to say or allege that the plaintiff is not a corporation or has not the power to make the contract herein sued on, or to make any denials contrary to defendant's own acknowledgment and deed of about August 1st, 1881, as appears by the said amended complaint herein and admitted by the said answer thereto.

WHALLEY, BRONAUGH, NORTHUP & DEADY,
Attorneys for Plaintiff.

STATE OF OREGON, *County of Multnomah,* } *ss:*

I, E. C. Bronaugh, do hereby certify that I am one of the attorneys for the plaintiff above named, and that the foregoing demurrer is good in point of law, as I verily believe.

E. C. BRONAUGH,
Att'y for Plaintiff.

97 STATE OF OREGON, *County of Multnomah,* } *ss:*

Due service of the within demurrer is hereby acknowledged, at Portland, Oregon, this 24th day of Nov., 1885, by receiving a copy thereof, duly certified to as such by E. C. Bronaugh, counsel for plaintiff.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

Endorsed: Filed Nov. 24, 1885. R. H. Lamson, clerk.

98 And afterwards, to wit, on the 27 day of Nov., 1885, there was duly filed in said court a reply in words and figures as follows, to wit:

99 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

Plaintiff, for reply to the answer of defendant to plaintiff's second amended complaint herein, alleges that plaintiff has not knowledge or information sufficient to form a belief as to whether or not at the time of the passage of said resolutions by the directors of the defendant corporation the board of directors was composed of eleven persons or members or had at any time prior thereto been composed of eleven members, or as to what number of persons or members composed defendant's board of directors at any of said times, or as to whether or not four and no more of said directors held any special meeting of said board, or as to whether or not at such alleged meeting or at any meeting four members of said board did pass any resolution authorizing or directing the execution of said lease, and denies that said lease is or ever was a "pretended" lease, and denies that the directors of defendant in passing the resolution mentioned in said amended complaint authorizing and directing the execution of said lease "assumed" to hold said meeting or "assumed" or "pretended" to pass said resolutions, and alleges that plaintiff has not knowledge or information sufficient to form a belief as to whether the resolution which it is alleged in said answer that four of the members of defendant's board of directors assumed to pass is or is not the same resolution mentioned in the complaint as having been passed by defendant's board of directors, or as to whether any action of
100 four of defendant's directors in passing any resolution in the action relied upon by plaintiff as constituting the passage of said resolution of defendant's board of directors in the complaint mentioned, and denies that said resolution was a "pretended" resolution; plaintiff alleges that it has not knowledge or information sufficient to form a belief as to whether no other resolution was passed by defendant's board of directors authorizing or directing any of defendant's officers to sign, execute, seal, or acknowledge or deliver said lease, and denies that the same is or ever was a pretended lease.

Plaintiff denies that said meeting was a pretended meeting, and alleges that plaintiff has not knowledge or information sufficient to form a belief as to whether or not the same was a regular or stated meeting or was a special meeting of said board, or as to how many of the members of defendant's board of directors were present or voted or were represented thereat, or as to whether notice of the object of said meeting was or was not given to all of the members of

defendant's said board of directors, but plaintiff alleges that said meeting of defendant's board of directors at which said resolution mentioned in said complaint was passed and adopted was a meeting duly and properly called and held, and was in all respects a lawful and authorized meeting of the directors who were present thereat, and that the said resolution passed by them at said meeting was duly and lawfully passed and adopted by them.

Plaintiff denies that said Henry Villard acted upon the authority of any "pretended" resolution, or without authority or direction from defendant, in signing defendant's name to said indenture of lease, and denies that said Tyndale, upon any "pretended" authority, or without authority, attached thereto defendant's corporate
101 seal, and denies that any pretended or unauthorized action by either of them constituted the execution by the defendant of said lease in said complaint, mentioned and relied upon.

And for further reply to said answer plaintiff alleges that the execution, acknowledgement, and delivery of said indenture of lease by defendant's said president, Henry Villard, and assistant secretary, Trolius Tyndale, was after the making and delivery thereof duly and fully ratified by the defendant, and that defendant, acting under and in pursuance of the demise in said lease contained and not otherwise, on or about the said 1st day of August, A. D. 1881, entered into and took possession of the said railroad and other property in said indenture of lease mentioned and described and continued to hold possession thereof from that time until about the said 15th day of May, A. D. 1884, under said lease, and during that time regularly attorned to plaintiff for said semi-annual installment of rental and paid the same to plaintiff when and as the same became due and payable according to the terms, tenor, and provisions of said lease, the said defendant having during all of said time full knowledge by its records of the character of said meeting at which and of the number of its members of its board of directors by whom said resolution authorizing the execution and delivery of said indenture of lease was adopted and passed, and having full knowledge during all of said time of the time, place, and manner of the execution of said lease by defendant's said president and assistant secretary, and of the contents, terms, and covenants of said indenture of lease. Wherefore plaintiff alleges that defendant ought not now to be allowed or heard to deny the execution by defendant of said
102 indenture of lease or the validity or obligation of the contract thereby evidenced and made.

And for further reply to the matters alleged and set forth in said answer plaintiff alleges that defendant ought not to be permitted or heard to deny the due execution by it of the said lease nor be allowed or heard to say or allege that defendant did not enter into said contract of leasing nor sign, seal, acknowledge, or deliver the said indenture of lease, or to make any denials contrary to the defendant's own acknowledgment and deed of about August 1st, 1881, as appears by the second amended complaint herein, because that heretofore, to wit, on or about the 28th day of June, 1884, plaintiff commenced an action at law against defendant upon said

lease in plaintiff's said second amended complaint in this action mentioned and described, by filing plaintiff's complaint in this honorable court against the defendant for the recovery of that certain semi-annual installment of rent which accrued and fell and became due and owing from defendant to plaintiff on the 15th day of May, A. D. 1884, under and by virtue of and according to the terms of said indenture of lease and under and according to the said stipulation and covenant of defendant therein contained, wherein and whereby the defendant did covenant, promise, and agree to pay to the plaintiff an annual rental for the said railroad and other property in said lease mentioned of twenty-eight thousand pounds sterling money of Great Britain in half-yearly payments of fourteen thousand pounds sterling each on the 15th day of May and the 11th day of November in each year, in advance, for and during the said term; that summons was duly issued and served upon defendant in said action, and defendant duly appeared therein and made defense thereto by answering to the complaint of plaintiff in said action, in and by which answer the defendant denied the
103 due incorporation and organization of plaintiff and the making and registration of its memorandum of association and the location of plaintiff's principal office at Dundee, in Scotland, and the authority of plaintiff to own, purchase, construct, operate, lease, or sell any railway in Oregon, and that either plaintiff or defendant ever had the power or authority to execute said writing or indenture of lease of said railway and other property in said lease mentioned and described, and that the stockholders of defendant ever authorized the same or assented thereto; and that also in and by said answer the defendant alleged and pleaded that said lease was and is unauthorized and void, and that defendant had fully paid the rental provided for in said lease for the period during which it held possession of said railway thereunder, to wit, for the term ending May 14th, 1884, together with other attempted denials and allegations which were in said answer contained; that on motion of plaintiff certain portions of said answer were stricken out and plaintiff demurred to the remaining portions thereof, whereby an issue of law was tendered as to the sufficiency thereof as a defense to the cause of action set forth in said complaint in said action for the recovery of said installment of rent which became due and owing by defendant to plaintiff on said 15th day of May, 1884, amounting to the sum of $68,131.00, under and according to said terms of said lease set forth in said complaint in said action.

That defendant joined in said issue and such proceedings were thereafter had in said action that the issue so joined therein was found and determined by this honorable court in favor of plaintiff and against defendant, and thereupon the judgment of this court was, on the 18th day of March, 1885, duly rendered and given in favor of plaintiff against defendant for the recovery of the sum of $72,715.43 of rental and interest then due and owing by
104 defendant to plaintiff upon said indenture of lease and for the costs of said action, which judgment remains and now is in full force and effect and in nowise reversed or annulled.

And for further reply to said answer plaintiff alleges that defendant ought not to be allowed or heard to plead to or deny the corporate existence or due organization of plaintiff as a corporation or facts relating to the organization of plaintiff as a corporation or to question or deny the demise alleged in said amended complaint by plaintiff to defendant or to plead to, question, or deny the powers, rights, privileges, franchises, or ownership of plaintiff alleged in the complaint, or to deny the due execution by defendant and plaintiff of the said indenture of lease of about August 1st, 1881, or the making of the contract of leasing therein mentioned, contrary to the defendant's own acknowledgement, because that on or about the 25th day of June, 1885, plaintiff commenced a certain other action at law against defendant in this honorable court by filing a complaint against defendant, wherein and whereby the due incorporation and organization of both the plaintiff and defendant corporations and the right, power, and authority of each and both of said corporations to make and enter into the said contract of leasing and to execute the said indenture of lease and the due and proper execution, acknowledgement, and delivery thereof by both plaintiff and defendant were set forth and duly and properly alleged and pleaded, and wherein and whereby it was also duly alleged and declared that in and by said indenture of lease plaintiff did let and demise to defendant for said term of ninety-six years the railroad and other property in said amended complaint in this action mentioned and described, and that defendant, as part consideration of and for said demise, did covenant, promise, and agree to
105 and with plaintiff that defendant would pay yearly to plaintiff and every year during said term of said lease and at the same time and place as the rental aforesaid the sum of six hundred pounds sterling money for the purpose of enabling the plaintiff to keep up its corporate organization and to pay its officers and office expenses, and that under said covenant and agreement there was due to plaintiff from defendant on the 15th day of May, 1884, the sum of three hundred pounds sterling money, which is equivalent to the sum of $1,459.95 in lawful money of the United States, and that on the 11th day of November, 1884, under said covenant and agreement there was due to plaintiff from defendant the further sum of three hundred pounds sterling money, equivalent to the like sum of $1,459.95 in lawful money of the United States, and that on the 15th day of May, 1885, there was due to plaintiff from defendant under said covenant and agreement the further sum of three hundred pounds sterling money, equivalent to the like sum of $1,459.95 in lawful money of the United States, for which several sums of money, with legal interest, together with the costs and disbursements of said action, judgment was in and by said complaint demanded.

That defendant was duly served with summons in said action and duly appeared therein and made defense thereto by answer to said complaint; to which answer the plaintiff demurred and said demurrer was sustained by the court; and thereupon, on the 29th day of July, 1885, the judgment of this honorable court was duly rendered and given in said cause in favor of plaintiff and against de-

fendant for the sum of $4,628.32, being the aggregate of principal and interest then due from defendant to plaintiff upon defendant's said agreement and covenant in said lease contained for the
106 payment to plaintiff of said sum of six hundred pounds sterling money per annum in said equal semi-annual installments for the purpose of enabling the plaintiff to keep up its corporate organization and to pay its officers and office expenses, and for the costs and disbursements of said action, which said judgment remains and now is in full force and effect and in nowise reversed or annulled.

And for reply to the further and separate answer of defendant herein plaintiff denies that on the 29th day of July, 1885, or at any time whatever in any action then pending in the circuit court of the United States for the district of Oregon or in any action whatever between plaintiff and defendant for the same cause of action as that set forth in the complaint herein any judgment was duly or otherwise given or rendered in favor of plaintiff or against the defendant in the sum of four thousand and twenty-eight and .32 dollars or in any sum of money whatever or otherwise, or for any costs or disbursements whatever either the sum of $27.02 or otherwise, and denies that plaintiff ever at any time commenced any other than this present action against defendant upon or for the same cause of action as that set forth in the complaint herein.

Wherefore plaintiff prays judgment against defendant as demanded in plaintiff's said second amended complaint herein.

WHALLEY, BRONAUGH, NORTHUP & DEADY,
Attorneys for Plaintiff.

STATE OF OREGON, *Multnomah County,* } ss:

I, Hugh Roger, being first duly sworn, do depose and say that I have read the foregoing reply, and that the same is true as I
107 verily believe; that I am the agent and attorney-in-fact of the plaintiff, and that the reason that I make this verification is that there is no officer of said plaintiff now in said district of Oregon who can verify said reply.

HUGH ROGER.

Subscribed and sworn to before me this 27 day of November, A. D. 1885.

[SEAL.] U. S. GRANT MARQUAM,
Notary Public for Oregon.

STATE OF OREGON, *County of Multnomah,* } ss:

Due service of the within reply is hereby accepted, at Portland, Oregon, this 27 day of Nov., 1885, by receiving a copy thereof, duly certified to as such by E. C. Bronaugh, counsel for plaintiff.

DOLPH, BELLINGER, M. & S.,
Attorneys for Defendant.

Endorsed: Filed Nov. 27, 1885. R. H. Lamson, clerk.

108 And afterwards, to wit, on the 28 day of Nov., 1885, there was duly filed in said court a motion to strike out parts of reply in words and figures as follows, to wit:

109 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant. } No. 1120.

Now comes the defendant above named and moves the court to strike out the following portions of the reply of the plaintiff in this cause upon the ground that such portions of said reply are and each of them is irrelevant and immaterial, to wit:

1. All that portion of said reply beginning with line 10 of page 3 and extending to and including line 10 of page 4 of the same.

2. Beginning with line 11 of said page 4 and extending to and including line 3 of page 7 of said reply.

3. Beginning with line 4 of page 7 and extending to and including line 15 of page 9 of said reply.

Defendant also moves to strike out all that part of said reply beginning with the word "but," in line 22 of page 2 of said reply, and extending to and including the last line of said page 2, on the ground that the same is sham, irrelevant, and immaterial.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

DISTRICT OF OREGON:

Service of the within motion upon us is hereby acknowledged at Portland on this 28th day of November, 1885.

WHALLEY, BRONAUGH, NORTHUP & DEADY,
Att'ys for Pl'ff.

Endorsed: Filed Nov. 28, 1885. R. H. Lamson, clerk, by R. B. Lamson, deputy.

110 And afterwards, to wit, on the 8 day of Dec., 1885, there was duly filed in said court a notice in words and figures as follows, to wit:

111 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant. } No. 1120.

To The Oregon Railway and Navigation Company, the above-named defendant, and to Dolph, Bellinger, Mallory & Simon, its attorneys:

You are hereby notified that at the hour of 10 o'clock a. m. on Monday, the 14th day of December, 1885, the plaintiff above named, by its attorneys, will apply to and move the above-entitled honorable court to set down for argument and hearing the motion to strike out parts of the answer and the demurrer to other parts of the answer of defendant to the amended complaint, and also the motion of defendant to strike out parts of the reply to other portions of said answer in the above-entitled action.

WHALLEY, BRONAUGH, NORTHUP & DEADY,
Attorneys for Plaintiff.

STATE OF OREGON, } ss:
County of Multnomah, }

Due service of the within notice is hereby accepted, at Portland, Oregon, this 8th day of December, 1885, by receiving a copy thereof, duly certified to as such by E. C. Bronaugh, counsel for plaintiff.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

Endorsed: Filed Dec. 8, 1885. R. H. Lamson, clerk, by R. B. Lamson, deputy.

112 And afterwards, to wit, on Friday, the 11 day of December, 1885, the same being the 42 judicial day of the regular October term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

113 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1120.

DECEMBER 11, 1885.

Now, at this day, comes the plaintiff, by Mr. E. C. Bronaugh, of counsel, and the defendant, by Mr. Joseph Simon, of counsel, and on motion of plaintiff it is ordered that this cause be, and the same is hereby

set for hearing on the motion to strike out parts of the answer, the demurrer to the answer, and the motion to strike out parts of the reply on Monday, December 28, 1885.

114 And afterwards, to wit, on Wednesday, the 30 day of December, 1885, the same being the 49 judicial day of the regular October term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

115 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1120.

DECEMBER 30, 1885.

Now, at this day, this cause comes on to be heard on the motion to strike out parts of the reply, and was argued by Mr. John W. Whalley and Mr. E. C. Bronaugh, of counsel for plaintiff, and by Mr. C. B. Bellinger, of counsel for defendant; on consideration whereof it is ordered that said motion be, and the same is hereby, denied.

116 And afterwards, to wit, on the 2 day of January, 1886, there was duly filed in said court a demurrer to reply in words and figures as follows, to wit:

117 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant. } No. 1120.

Now comes the defendant and demurs to the further reply of the plaintiff, beginning on line 11 of page 4 of plaintiff's reply herein and ending with line 3 on page 7 of the same.

And defendant also demurs to the further reply in said reply contained, beginning with line 4 of page 7 thereof and ending with line 15 of page 9.

And defendant so demurs as to each of the said further replies upon the ground that the same does not state facts sufficient to constitute a defense or reply to the matters and things in the answer herein set forth and alleged.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

DISTRICT OF OREGON, } ss:
County of Multnomah, }

Due service of the within demurrer is hereby accepted, at Portland, Oregon, this 2d day of Jan'y, 1886, by receiving a copy thereof, duly certified to as such by C. B. Bellinger, of counsel for def't.

E. C. BRONAUGH,
Attorney for Pl'ff.

Endorsed: Filed Jan. 2, 1886. R. H. Lamson, clerk, by R. B. Lamson, deputy.

118 And afterwards, to wit, on Friday, the 16 day of April, 1886, the same being the 4 judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

119 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1120.

APRIL 16, 1886.

This cause was heard upon the motion to strike out parts of the answer herein upon the demurrer to the answer and upon the demurrer to the reply, and was argued by Mr. Earl C. Bronaugh, of counsel for the plaintiff, and by Mr. C. B. Bellinger, of counsel for the defendant. On consideration whereof it is ordered that said motion to strike out parts of the answer be, and the same is hereby, allowed, except as to the third and eighth clauses thereof, as to which clauses it is denied; and it is considered that said demurrer to the answer be, and the same is hereby, sustained, and that the demurrer to the reply be, and the same is hereby, overruled.

120 And afterwards, to wit, on the 16 day of April, 1886, there was duly filed in said court an opinion in words and figures as follows, to wit:

121 U. S. Circuit Court, District of Oregon.

FRIDAY, *April* 16, 1886.

THE OREGONIAN RAILWAY COMPANY, Limited, *v.* THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1120. Action on Lease to Recover Instalment of Rent.

SAME *v.* SAME. } No. 1143.

SAME *v.* SAME. } No. 1178.

SAME *v.* SAME. } No. 1179. Action to Recover Instalment of Expense Money.

(1.) Sham, redundant, and immaterial allegations in answer.—An allegation in an answer denying knowledge of a matter alleged in the complaint will not be stricken out as sham unless it appears that the same must be false. An allegation in a complaint that the plaintiff, a British corporation, "is a citizen of Great Britain" is meaningless and immaterial and so is a denial of the same in the answer. It is not necessary that a corporation formed under the law of Great Britain to construct, own, operate, and lease railways in Oregon should specify in its memorandum of association the termini thereof, and therefore an allegation in an answer to a complaint in an action by such a corporation on a lease of its road that it had not made such a specification is immaterial. An allegation of fact in an answer which is not *per se* a defense to the action and is not attempted to be made so by any proper averment is immaterial. A mere denial of the lessee corporation's power to execute a lease of a railway in an action thereon by the lessor corporation to recover rent is a conclusion of law and immaterial. An allegation by the lessee corporation in such action that the lessor's road had no near connection with its road, that the capital stock of the latter was not contributed to operate leased roads, that the lease was not ratified by its stockholders, or that it was signed by its president and secretary without the state of its origin is immaterial. In an action by the lessor to recover the rent reserved in a lease an allegation in the answer to the complaint that the lessee did not occupy the premises during the period for which the rent is demanded is immaterial, unless it is further alleged that such non-occupation was the direct result of the fault or misconduct of the lessor.

(2.) Estoppel by contract.—In an action by an apparent corporation

on a lease of its railway to recover an instalment of the rent reserved therein the lessee is estopped to deny the lessor's corporate existence or power to make such contract.

(3.) Contradictory allegations.—When a denial of knowledge concerning a matter alleged in the complaint is followed by a direct averment necessarily implying such knowledge, either the denial may be stricken out as sham or the averment as redundant.

(4.) Judgment on demurrer an estoppel.—Judgment on a demurrer to a complaint is as conclusive and binding on the parties to the action as to all matters well pleaded therein as though it was given on a verdict on an issue arising on a denial of the allegations of the complaint; and if final judgment is given for the plaintiff on a demurrer to an answer, such judgment is a conclusive determination between the parties of the questions involved in the defense made by such answer and of the material matters stated in the complaint.

(5.) Judgment, estoppel of.—A judgment is an estoppel in an action between the parties thereto as to any fact or matter determined thereby.

(6.) Estoppel by judgment in an action on lease for rent.—A covenant in a lease of a railway for a number of years to pay the rent reserved therein in semi-annual instalments is in the nature of a series of undertakings or obligations assumed or incurred at the same time and under the same circumstances, and a judgment in an action to recover any one of these instalments of rent is conclusive of the validity of the lease and the liability of the lessee thereunder in any subsequent action thereon as to any matter or defense that might have been made to the first action.

(7.) Writ of error. Effect of on judgment.—A writ of error from the supreme to the circuit court is not a proceeding under the State code, but at common law, as modified by the Revised Statutes, and it does not have the effect, pending the proceeding, to suspend the operation of the judgment of the circuit court as a bar or an estoppel.

DEADY, *J.*:

These actions are brought by the plaintiff, a corporation alleged to have been formed in Great Britain under "the companies act of 1862," against the defendant, a corporation formed under the Oregon corporation act of the same year.

They are brought on the covenants in a lease alleged to have been executed on August 1, 1881, by which the former demised to the latter its railway in Oregon for the term of ninety-six years upon a rental to be paid in advance, in semi-annual installments, of $68,131, on May 15th and November 11th, together with the further sum at the same times of $1,459.95 for the purpose of paying the expense of keeping up the lessor's organization.

The first three actions are brought to recover three several installments of rent falling due on November 11, 1884, May 15 and No-

vember 11, 1885, and the fourth one to recover the installment of the expense money falling due on November 11, 1885.

The first two of the actions were commenced on March 18, 1885, and on November 7th there were amended complaints filed in each of them. The last two were commenced on November 28th, and they were all heard on December 30th and January 2d thereafter on (1) motions to strike out parts of the answers as "sham, frivolous, irrelevant, immaterial, and redundant;" (2) demurrers to so much of the answers as denies the corporate existence of the plaintiff and its right to have and exercise the powers and privileges claimed by it; and (3) demurrers to the second and third replies of former adjudications of certain matters between the same parties in reply to certain defences set up in the answers.

The answers in these cases are alike, except in the last two there is defence of a former adjudication set up in bar. They are all specimens of what may be called the conglomerate style of pleading, in which denials and other matters having no legal or logical connection with one another are run together so as to form a continuous statement instead of being pleaded separately as distinct defences in the manner required by § 72 of the code.

But the plaintiff, instead of moving to strike out the answers on this account, as it might (Code, § 81), has undertaken to purge them of sundry clauses and statements, and has demurred and replied to the remaining portions thereof, distinguishing them by their character.

The motions to strike out include fourteen portions or clauses of the answers.

The first one is a denial of the allegation in the complaint that the plaintiff "is a citizen of Great Britain." The complaint alleges that the plaintiff is a foreign corporation formed under the laws of Great Britain, and adds, "is a citizen of Great Britain."

As there are no "citizens" of Great Britain, and as the allegation that the plaintiff is a foreign corporation formed in and under the laws of Great Britain is sufficient to show that it is in contemplation of law an alien, and therefore entitled to sue in this court, this allegation as to its citizenship is a meaningless and immaterial one and so is the denial. The only proper response to it was a motion to strike out. Besides, matter in abatement, as that the plaintiff is not a corporation or citizen, as alleged in the complaint, must be set up in a separate plea, and if pleaded with any other defence is deemed waived. C. C., rule 40. Sheppard *v.* Graves, 14 How., 509.

The second clause is an allegation that the plaintiff has not specified in its memorandum or articles of association the termini of the road it was incorporated to construct, lease, or operate in Oregon.

This allegation is based on the assumption that subdivision 6 of § 4 of the Oregon corporation act (Or. Laws, 525), which provides that the articles of a corporation formed thereunder to construct a road shall specify the termini thereof, applies to a foreign corporation formed to construct a railway in Oregon. But the validity of the organization of a corporation is to be determined by the law of

the place of its formation. In the exercise or assertion of its corporate power in Oregon a foreign corporation may be required to conform to the law of the State concerning the conduct of corporations, but the sufficiency of its incorporation must be tested by the law of the place of its origin; and this is not all.

By the act of October 20, 1880 (Sess. L., 56), "the plaintiff was directly recognized as an existing corporation lawfully engaged in the construction and operation of a railway in Oregon from 'Portland to the head of the Wallamet Valley.'"

The effect of this act is to establish the legal right of the plaintiff to construct and own the road in question, and in my judgment to dispose of the same. Oregonian R'y Co. *v.* Oregon R. & N. Co., 10 Saw., 481.

The third clause is a denial of any knowledge whether the plaintiff's memorandum of association specifies the purpose of its incorporation as alleged in the complaint. This is moved against particularly as sham. But it does not appear to be false. On the contrary, there is no reason to doubt its truth. The defendant does not appear to have ever had any connection with this memorandum from which it could be inferred that the contents thereof are known to it. Oregonian R'y Co. *v.* Oregon R. & N. Co., 10 Saw., 467.

The eighth one is also a denial of knowledge whether the plaintiff's directors ever adopted a resolution authorizing the execution of said lease. It is also moved against as sham. But it does not appear to be false, and must be taken to be true for the same reason.

The fourth one is an allegation as to what the memorandum of association under the companies act of Great Britain is required to contain without any averment that the plaintiff has not
122 complied therewith in its formation or any other application of the matter, and is therefore immaterial.

The fifth one is a denial of the defendant's power to lease or operate the plaintiff's road. This is a mere conclusion of law, and should have been alleged, if relied on, by a demurrer to the complaint. Oregonian R'y Co. *v.* Oregon R. & N. Co., 10 Saw., 472.

The sixth, seventh, and twelfth ones are allegations to the effect that the plaintiff's road has no near connection with the defendant's; that the capital stock of the latter was not contributed to operate leased roads, and that the lease in question was not ratified by its stockholders. These matters are immaterial and utterly frivolous. Oregonian R'y Co. *v.* Oregon R. & N. Co., 10 Saw., 488.

The ninth, tenth, and eleventh ones are clauses and phrases found in an allegation that the lease in question was executed by the president and assistant secretary of the defendant in pursuance of an invalid resolution, passed by a minority of the directors without authority of law, to the effect that, while the defendant's principal office is at Portland, its president and assistant secretary signed and sealed said lease at New York.

These clauses are omitted from the answers in the last two cases. They are clearly immaterial. It is well settled that while a corporation can have no legal existence beyond the boundaries of the State of its creation, yet it may act anywhere through its agents the same

as a natural person, unless prohibited by law. Bank *v.* Earle, 13 Pet., 588; Runyan *v.* Costar's Lessee, 14 Pet., 129; Galveston R'y Co. *v.* Cowdrey, 11 Wall., 476; McCall *v.* Byram, 6 Conn., 436; Bellows *v.* Todd, 29 Iowa, 217; O. & M. R'y Co. *v.* McPherson, 35 Mo., 25; Field on Corporations, §§ 25, 254.

The thirteenth and fourteenth ones are statements to the effect that on May 15, 1884, the defendant offered to return the road to the plaintiff, but that the defendant retained possession of the same under a stipulation with the plaintiff that such possession should not have the effect to prejudice either party until November 5, 1884, when, in a suit brought in this court by the plaintiff, the defendant was enjoined and required to operate the road until the further order of the court, which it did until the appointment of a receiver in said suit on the motion of the plaintiff, who thereupon took possession of the property and held it during the period for which the rent is sought to be recovered in this action.

This is not an action to recover money for the use and occupation of the premises. It is brought on the covenant of the defendant contained in the lease to pay the specific amount therein reserved as rent. Therefore these allegations concerning the possession of the property are immaterial. They do not affect the obligation of the defendant to pay the rent according to its contract, unless it is further alleged that such non-occupation was the direct result of the fraud or misconduct of the lessor. Oregonian Railway Co. *v.* Oregon R. & N. Co., 10 Saw., 476.

And so far as the possession of the receiver is concerned, it is for the benefit of whom it may concern; and, so far as appears, that is defendant.

All the clauses in the answer moved against, except the third and eighth ones, are immaterial. The matter contained in these comes within the purview of the demurrers to the answers.

The demurrers are taken to all those portions of the answers that controvert or deny the corporate existence and due organization of the plaintiff or the powers, franchises, or ownership of the plaintiff alleged in the complaints, for the reason "the defendant ought not to be allowed or heard to say that the plaintiff is not a corporation or has no power to make the contract herein sued on or to make any denials contrary to defendant's own acknowledgment and deed of August 1, 1881, as appears by the complaint herein and admitted by the answer thereto."

These demurrers are well taken. Oregonian R'y Co. *v.* Oregon R. & N. Co., 10 Saw., 477. This question was well considered in that case, and I have nothing to add to the conclusion reached therein. As was then said, "Where the law authorizes the formation and existence of the alleged corporation, with power to make the contract in question, then a party thereto ought not and cannot be heard, in an action thereon by such corporation, to deny its due formation or legal existence with the power to make said contract."

On November 27, 1885, the plaintiff replied to so much of said answers as are not included in the demurrers thereto and the motion to strike out.

After denying any knowledge of the invalidity of the meeting of the defendant's directors at which the execution of the lease was authorized, the replies, briefly stated, allege: (1) A ratification of the lease by the defendant with knowledge of all the facts by entering upon and taking possession of the road thereunder about August 1, 1881, and continuing in the same and paying rent therefor until May 15, 1884; wherefore the defendant ought not to be allowed or heard to deny the execution of said lease or the binding obligation thereof; (2) that the defendant ought not to be allowed or heard to deny the execution by it of said lease, because on June 28, 1884, the plaintiff commenced an action against the defendant thereon in this court for the installment of rent falling due thereon on May 15, 1884, wherein, among other things, the due incorporation of the plaintiff and its power and authority to construct and lease said road, as well as the due execution and validity of said lease and the power and the authority of the plaintiff and defendant to execute the same and perform the covenants therein contained, were put in issue and contested by a demurrer to the answer of the defendant therein, and by the judgment of this court thereon were determined in favor of the plaintiff; whereupon, on March 28, 1885, the defendant not making or offering to make any further answer of defense to the complaint, final judgment was given thereon for the plaintiff and against the defendant for the sum demanded thereon; (3) that the defendant ought not to be allowed or heard to deny the corporate existence of the plaintiff or to deny the demise by the plaintiff to the defendant or the due execution by each of them of said lease as alleged in the complaint, because on June 25, 1885, the plaintiff commenced another action thereon in this court against the defendant to recover three semi-annual instalments of the yearly sum of $2,919.90 which the defendant in and by said lease agreed to pay the plaintiff to meet the expense of maintaining its organization pending said lease, amounting in the aggregate to $4,379.85, wherein, on July 29, 1885, on a demurrer to the complaint by the defendant, judgment was given against it for the amount claimed by the plaintiff, and (4) in the last two actions denies that on July 29, 1885, or other time, in any action then pending between the plaintiff and defendant for the same cause of action set forth herein, any judgment was given in favor of the former or against the latter for the sum of $4,028.32 or any other sum. On November 28 the defendant moved to strike out the reply of ratification and the two replies of prior adjudication, and also an averment following the denial therein of any knowledge of the alleged invalidity of the meeting of the defendant's directors at which the lease was authorized to the effect that said meeting was duly called and held and the resolution in question duly passed thereat. The effect of these two contradictory allegations as to this matter of the meeting in question is to make the denial a sham or the averment redundant, as the party moving against them may elect.

The motions to strike out were allowed, as to the averment, on the ground of redundancy, and denied, as to the replies, for the reason that their sufficiency ought to be tested by demurrer. Thereupon,

on January 2, 1886, the defendant demurred to the two replies of former adjudication, and the questions arising thereon were then argued by counsel and submitted.

From these replies it appears that certain matters set up in the answers herein as a defence to these actions have been heretofore considered and determined in this court in an action between these parties on this lease in favor of the plaintiff.

On a demurrer to a complaint every material matter well pleaded therein is confessed, and if judgment is given thereon the same is as conclusive and binding on the parties to the action as though it was given on an issue arising on a denial of the allegations of the complaint; and if a final judgment is given for the plaintiff on a demurrer to the answer such judgment is a conclusive determination between the parties of the questions involved in the defense made by such answer and of the truth of the material allegations in the complaint, and may be pleaded as an estoppel in any other action between them. Gould *v.* Evansville, etc., R'y Co., 91 U. S., 553; Aurora *v.* West, 7 Wall., 99; Goodrich *v.* City, 5 Wall., 573; Wells' Res Adjudicata, § 446.

In the first action mentioned in the reply it appears that the defendant answered the complaint and alleged the invalidity of the lease for the reason, among others, that it had no power to execute the same, and on a demurrer to this answer final judgment was given for the plaintiff. In the second one all the material facts relative to the incorporation of the plaintiff and the execution of the lease by the plaintiff and the defendant were admitted by a demurrer to the complaint, on which there was a final judgment in favor of the former.

A judgment in an action on a particular demand is an estoppel in an action between the same parties as to any fact or matter actually put in issue and determined or admitted in the prior action.

Davis *v.* Brown, 94 U. S., 428; Cromwell *v.* County of Sac, *id.*,
123 353; Russell *v.* Place, *id.*, 608; Beloit *v.* Morgan, 7 Wall., 619; Sharon *v.* Hill, 9 West Coast Rep., 9.

Beloit *v.* Morgan, *supra*, is a good illustration of the rule and a case on all fours with this. A judgment was given in an action on a bond against the maker thereof in favor of the plaintiff. The bond was one of a series issued at the same time, and in a subsequent action between the same parties on another of these bonds it was held that the judgment in the first action was conclusive as to the validity of all of them. The court said in substance that all the objections made to the enforcement of the bonds in the second action might have been made in the first, and that "a party can no more split up defences than indivisible demands and present them by piecemeal in successive suits growing out of the same transaction."

In this lease there are, so to speak, a successive series of obligations or undertakings by the defendant to pay rent to the plaintiff every half year for a number of years incurred or assumed at the same time and under the same circumstances. In the action brought to recover an earlier installment of this rent the defendant might have made any defense thereto involving the validity of the lease or

its liability thereunder; and, the question of the validity of the lease and the liabilty of the defendant to pay the rent therein reserved having been determined in favor of the plaintiff in that action, the controversy is so far closed, and the defendant is estopped to set up any defence to a subsequent action for the recovery of any other of such installments of rent that existed and might have been made to the former action. On the argument it was suggested that the judgment in the first of the former actions had been taken to the supreme court on a writ of error, and therefore its operation as a bar or an estoppel is suspended. It is admitted that the writ of error has been taken as suggested, but even then it is not clear that the court can take notice of the fact on the demurrer to the replication. On the trial of the question made by the reply, the record of the former suit being introduced in support of the allegation therein, the fact that the judgment had been taken to the supreme court on error may be shown by way of confession and avoidance of the reply, if the effect of such a proceeding is to suspend the force and operation of the judgment as claimed.

But considering for the time being that the admission of the plaintiff's counsel as to the writ of error is a part of the reply, the estoppel of the former judgment is not affected thereby. A writ of error does not suspend the operation of a judgment as a bar or an estoppel. It is not an appeal which is so far a continuation of the original suit, but a proceeding in the nature of a new action to annul and set aside the judgment of the court below, which is not thereby vacated or affected pending the proceeding. Railway *v.* Twombly, 100 U. S., 81; Sharon *v.* Hill, 9 W. C. Rep., 9; Freeman on Judg., § 328. A writ of error from the supreme court to this is not a proceeding under the Code, but the common law, as modified by the Revised Statutes. The declaration in the latter clause of § 505 of the Code, that an action "is deemed pending from the commencement thereof until its final determination upon appeal," has no application to an action in this court—at least after it has terminated in a judgment for either party. The proceeding for the review of such a judgment is had in the supreme court and is not within the operation of § 914 of the Revised Statutes, conforming the practice in the circuit and district courts to that of the State courts.

But it is also admitted that no writ of error has been taken to the judgment in the second action mentioned in the reply, and there is therefore no question that it is an estoppel as to all the material matters admitted by the demurrer to the complaint therein.

The motions to strike out portions of the answers are allowed except as to the clauses numbered three and eight, and as to these they are disallowed. The demurrers to the answers, including the matter in said clauses three and eight, are allowed, and the demurrers to the replies are overruled.

This leaves the cases for trial on the questions of fact arising on the replies of ratification and prior adjudication to the answers of the defendant, the former being by § 92 of the Code "deemed controverted by the adverse party as upon a direct denial of avoidance

as the case may require," without any actual rejoinder thereto, and the issues made between the replies in numbers 1120 and 1143 to the defences of former judgments in actions on the same cause of action.

Mr. Earl C. Bronaugh, for the plaintiff.

Mr. Charles B. Bellinger, for the defendant.

(Signed) MATTHEW P. DEADY,
U. S. District Judge, Oregon.

Endorsed: Filed April 16, 1886. R. H. Lamson, clerk.

124 And afterwards, to wit, on the 7 day of May, 1886, there was duly filed in said court a stipulation in words and figures as follows, to wit:

125 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant. } No. 1120.

Whereas there are now pending in the above-entitled court four actions at law, numbered 1120, 1143, 1178, and 1179, in which The Oregonian Railway Company, Limited, is plaintiff, and The Oregon Railway and Navigation Company is defendant, which cases by the pleadings in them respectively are at issue upon matters of fact which in the main are alike and are to be proved by record evidence, and for the determination of which the intervention of a jury is not considered important, the parties being willing to have and desirous of having a speedy trial thereof:

It is therefore hereby stipulated between said parties, by their attorneys respectively, that said issues may and shall be submitted unto and tried by the court without the intervention of a jury, upon such record evidence and such testimony of witnesses, if any, as either party may desire and be permitted by the court under the rules of evidence to introduce, and that any evidence admitted by the court in either of said cases may be used on the trial of any or either of the other of said cases, together with such additional proper evidence, if any, as either party may desire to introduce, and that the trial of said cases be set by leave of the court for any convenient day after the 15th day of May, 1886.

WHALLEY, BRONAUGH, NORTHUP & DEADY,
Attorneys for Plaintiff.
DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

Endorsed: Filed May 7, 1886. R. H. Lamson, clerk.

126 And afterwards, to wit, on Monday, the 10 day of May, 1886, the same being the 14 judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

127 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1120.

MAY 10, 1886.

Now, at this day, on motion of Mr. Earl C. Bronaugh, of counsel for the plaintiff, and in accordance with the stipulation of the parties filed herein, it is ordered that this cause be, and the same is hereby, set for trial by the court without the intervention of a jury on Monday, May 17, 1886.

128 And afterwards, to wit, on Monday, the 17 day of May, 1886, the same being the 17 judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

129 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1120.

MAY 17, 1886.

Now, at this day, comes the plaintiff, by Mr. John W. Whalley and Mr. Earl C. Bronaugh, of counsel, and the defendant, by Mr. Charles B. Bellinger, of counsel; and, in accordance with the stipulation of the parties filed herein, this cause comes on to be tried by the court without the intervention of a jury, and the court, having heard the arguments of counsel and the evidence adduced, will advise thereof.

130 And afterwards, to wit, on the 20 day of Sept., 1886, there was duly filed in said court the findings of the court in this cause in words and figures as follows, to wit:

131 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1120.

SEPTEMBER 13, 18—.

In accordance with the stipulation of the parties filed herein this cause was tried by the court without the intervention of a jury, Mr. Earl C. Bronaugh and Mr. John W. Whalley appearing for the plaintiff and Mr. Charles B. Bellinger appearing for the defendant, and taken under advisement; and now at this day, the court being fully advised in the premises, finds and states the following conclusions of fact:

I. That the plaintiff is, and has been since May fourth, eighteen hundred and eighty, a corporation duly incorporated and organized under the law of the Kingdom of Great Britain known as "the companies act, 1862," and that its principal office and place of business is at Dundee, in Scotland.

II. That plaintiff is and was at all the times mentioned in the complaint the owner of the railway and other property mentioned in the complaint, and took and had power, under and by virtue of its memorandum of association, to construct, own, operate, or otherwise dispose of said railway and other property, and was authorized and had power to enter into, make, and execute the agreement and indenture of lease described in the complaint.

III. That defendant is and was at all the times mentioned in the complaint a corporation duly incorporated and organized under the general incorporation law of the State of Oregon, and that its principal office and place of business is at the city of Portland, in said State.

132 IV. That defendant took and had power under and by virtue of its articles of incorporation to enter into, make, and execute the agreement and indenture of lease mentioned in the complaint and to possess and operate the railway thereby demised.

V. That on or about August first, eighteen hundred and eighty-one, the plaintiff and the defendant did each enter into, make, and execute, and the defendant did thereafter duly ratify and confirm, the said agreement and indenture of lease of that date, in the complaint mentioned and described, wherein and whereby plaintiff, for the considerations therein specified, did demise to defendant, for the term of ninety-six years from said date, the railway therein and in the complaint described and designated as "the existing railroad," then owned by plaintiff and commonly known as the "narrow-gauge" railway, in the State of Oregon, with certain equipments, appurtenances, and other property described in the complaint.

VI. That in and by said indenture of lease the plaintiff did reserve and the defendant did promise, covenant, and agree to pay to plaintiff, in consideration of said demise, an annual rental for said

railway and other property of twenty-eight thousand pounds sterling money of Great Britain, in half-yearly payments of fourteen thousand pounds sterling each, on May the fifteenth and November eleventh in each year in advance, for and during said term of ninety-six years.

VII. That said indenture of lease has ever since the date thereof been and now is in full force and effect, and that on November eleventh, eighteen hundred and eighty-four, an installment of rent, amounting to fourteen thousand pounds sterling, became due and payable to plaintiff from defendant under and according to the terms of said lease and the covenants therein contained, which sum
133 defendant has failed and refused to pay, and the whole thereof, with interest thereon from said November eleventh, eighteen hundred and eighty-four, is now due and owing from defendant to plaintiff.

VIII. That the equivalent of said sum of fourteen thousand pounds sterling is in lawful money of the United States the sum of sixty-eight thousand one hundred and thirty-one dollars.

And as a conclusion of law from the above the court finds that the plaintiff is entitled to have and recover of and from the defendant the said sum of sixty-eight thousand one hundred and thirty-one dollars, in lawful money of the United States, with legal interest thereon from said November eleventh, eighteen hundred and eighty-four, together with the costs and disbursements of this action, to be taxed.

(Signed) DEADY, *J.*

Endorsed: Filed Sept. 20, 1886. R. H. Lamson, clerk.

134 And afterwards, to wit, on the 20 day of Sept., 1886, there was duly filed in said court an opinion in words and figures as follows, to wit:

135 U. S. Circuit Court, District of Oregon.

MONDAY, *September* 13, 1886.

OREGONIAN RAILWAY COMPANY, Limited, *v.* OREGON RAILWAY & NAVIGATION COMPANY. } No. 1120. Action to Recover Installment of Rent.

SAME *v.* SAME. } No. 1143.

SAME *v.* SAME. } No. 1178.

SAME *v.* SAME. } No. 1179. Action to Recover Installment of Expense Money.

(1.) Burden of proof.—The complaint stated that a lease was exe-

cuted by the officers of the defendant corporation in pursuance of a resolution duly passed by its board of directors. The answer admitted the execution of the lease under the corporate seal, but alleged that the meeting at which the resolution was passed authorizing such execution was held without a quorum. The reply denied knowledge or information concerning the want of a quorum sufficient to form a belief: Held, that the burden of proof is on the defendant.

(2.) Ratification of lease.—A corporation, like a natural person, may ratify any act which it can perform, and the entry into the possession of a leased road in pursuance of a lease executed by its officers without due authority, and operating the same and paying the rent therefor, as reserved in said lease, is ample evidence of the ratification thereof.

(3.) Estoppel. Judgment by default.—A judgment for want of an answer to a complaint is a conclusive determination between the parties to the action of every matter well pleaded therein and necessary to such judgment.

(4.) Distinct demands.—A claim for a semi-annual installment of rent arising on a covenant in a lease of a railway for 96 years is a separate and distinct demand from a claim for a semi-annual installment of money due under another covenant in said lease and appropriated thereby to the payment of the expense of maintaining the corporate organization of the lessor.

DEADY, *J.*:

These cases were before this court on April 16 on (1) motions to strike out portions of the answers; (2) demurrers to so much of the answers as controverted or denied the corporate existence of the plaintiff and its right to have and exercise the powers and privileges claimed by it and the power of the defendant to take and have a lease of the plaintiff's road; and (3) demurrers to the second and third replies to the special defense in the answers of the illegality of the meeting of the directors at which the resolution authorizing the execution of the lease was passed, when the demurrers to the replies were overruled and the motions and demurrers to the answers were so far allowed (27 Fed. Rep., 277) as left the cases for trial on the issues of fact arising on the several replies to the special defense (1) denying any knowledge or information thereof sufficient to form a belief, (2) a ratification of the lease by the defendant, and (3) two prior adjudications of the question of the validity and binding force and effect of the lease and the issues made by the replies in numbers 1120 and 1143 to the special defense of a recovery in a former action on the same cause of action denying the same.

On May 17 the cases were heard by the court without a jury and submitted for decision. Briefly stated, the first special defense is as follows: The alleged lease was not executed by the authority of the defendant's board of directors, for that at and before the date thereof, August 1, 1881, said board consisted of eleven persons, four of whom "assumed to hold a special meeting of said board," whereat the resolution authorizing the execution of said lease was

passed; that thereafter the president of the defendant's board of directors signed its name to said lease, and the assistant secretary thereof affixed its corporate seal thereto, and that none of the members of said board had notice of such meeting, which was not a regular or stated one.

It is not alleged in terms in this defense that this meeting was illegal or unauthorized, or that it was without the power to pass the resolution in question; but on the argument it was assumed that such was the case without question under the corporation act of the State. This act provides (Or. Laws, pp. 526–7, §§ 9, 11) that the powers of a corporation "are exercised" by the directors, and that "the powers vested in the directors may be exercised by a majority of them, and any less number may constitute a quorum at all regular or stated meetings authorized by the by-laws of the corporation in all cases when either the directors or incorporators shall have filed with the secretary of state and county clerk a written statement designating such less number sufficient to form a quorum."

The facts alleged in this defence are controverted by the denial of the plaintiff. No evidence was offered on the matter by either party, each contending that the burden of proof is on the other. In my judgment the burden of proof in this respect is on the defendant. It affirms a particular state of facts, which, if true, overcome the *prima facie* case made by the admission of the execution of the writing by its president and secretary under its corporate seal. The issue is found for the plaintiff.

The evidence in support of the reply of ratification is full and convincing and leaves no room for doubt.

Among other things, it appears that on October 3, 1881, the manager of the defendant issued and circulated the following printed circular: "The railroad and fixtures of the Oregonian Railway Company, Limited, having been turned over to the Oregon Railway & Navigation Company under the lease, J. M. Fillmore, superintendent, and officers and employés subordinate to him will retain their present positions until further notice, and report to the undersigned, C. H. Prescott, manager."

On October 1, 1882, the president of the defendant's board of directors made his third annual report to the stockholders of the corporation for the year ending June 30, 1882. This report was published in pamphlet form, together with an appendix, signed by the vice-president and secretary of the board, and generally circulated among the stockholders; and on October 1, 1883, a similar report and appendix for the year ending June 30, 1883, was made, published, and circulated in like manner. In both these reports the mileage operated by the defendant during the year by rail and water is given, and the road of the plaintiff is mentioned under the head of "leased lines." In the accounts given of the receipts and disbursements of the defendant in the appendices the earnings and expenses of this road are stated and the rent paid for the same, the amount being $112,760.40 in 1882 and $145,429.28 in 1883. Annexed to the report of 1883 is a map of the defendant's "system, its branches and allied lines," on which the plaintiff's road is repre-

sented in blue as a part of the "Oregon Railway and Navigation Company's lines."

On May 1, 1882, at a regular meeting of the defendant's board of directors, the purchase of the warehouses on the line of the plaintiff's road from the Oregonian Warehouse Company was authorized and the leasing of the same to James Steele & Co. provided for.

A corporation, like a natural person, may ratify any act of its agent or any one professing to act by its authority which it has the power to perform. Eureka Co. *v.* Bailey Co., 11 Wall., 491; Gold Mining Co. *v.* National Bank, 6 Otto, 644; Witt *v.* Mayor, 5 Rob. (N. Y.), 259; The E. C. Society *v.* The Episcopal Church, 1 Pick., 375; P. R. M. Co. *v.* D. S. & G. R. R'y Co., 7 Saw., 67.

Ratification takes place when one person adopts a contract made for him or in his name, which is not binding on him because the one who made it was not duly authorized to do so. Ratification is a question of fact, and in the great majority of instances turns on the conduct of the principal in relation to the alleged contract or the subject of it, from which his purpose and intention thereabout may be reasonably inferred—Story on Agency, §§ 253–260; and generally deliberate and repeated acts of the principal, with a knowledge of the facts, that are consistent with an intention to adopt the contract or inconsistent with a contrary intention are sufficient evidence of ratification.

In this case any one of the several acts of the defendant is sufficient evidence of ratification. In the two years next succeeding the lease there were two annual meetings of the stockholders, at each of which a board of directors was elected, to whom the fact and results of operating this road as a leased one were fully reported without, so far as appears, a question or objection from any one. Indeed, no one seems to have thought that there was anything that needed ratifying; and, on the whole case, it does not even now appear that there was. The entry into possession of the road and the payment of rent in pursuance of the terms of the lease by the directors, who are the corporation, is of itself plenary evidence of ratification of the lease by the defendant. This issue must be found for the plaintiff.

The facts contained in the other two replies to this defense are stated fully in 27 Fed. Rep., *supra*, 181–'2.

The records of the prior actions have been introduced in evidence by the plaintiff, and I think they sustain the conclusion of the replies that the defendant is, on account of judgments therein, estopped to allege this defence in this action.

The judgment set up in the first of these replies was given in this court in an action between these parties, commenced on June 28, 1884, for an installment of rent alleged to be due under the lease on May 15, 1884. In the amended complaint therein it is alleged that the defendant was duly authorized by its "articles of incorporation and by the resolution of its board of directors" to execute said lease. In the third amended answer the defendant denies "that it ever had or has the power or right or franchise to purchase or lease any rail-

road in the State of Oregon," and denies the demise of the
136 road to it by the plaintiff, but admits that its president and assistant secretary signed the writing in question and affixed thereto its corporate seal, and alleges that neither of said officers had authority to execute such writing on behalf of the defendant, and that the State of Oregon did not consent to such or any lease of said road.

To this defense the plaintiff demurred, and on consideration thereof the court gave judgment for the plaintiff.

If the plaintiff had gone to trial on this defense evidence might have been given on the trial on the question of whether the officers of the defendant were authorized by a resolution of the directors to execute the lease, and if it appeared that the question was submitted to the jury the finding and judgment would be conclusive on the point in any subsequent action between the parties.

But the order or judgment sustaining the demurrer to this defense determines nothing but what is necessary thereto (Or. Code, C. P., § 726), namely, that under the statute and its articles of incorporation the defendant had power to take the lease. Add to this the admission in the defense that the lease was executed by the president and secretary of the corporation under its corporate seal, and, nothing appearing or being alleged to the contrary, presumably it was lawfully done by the authority of the directors. Bank *v.* Dandridge, 12 Whea., 70; McKeon *v.* Citizens' R'y Co., 42 Mo., 79.

And, as a matter of fact, that was the only question considered by the court. This defense, that the resolution was not passed at a legal meeting, had not then been mooted, but the final judgment in the case was given on the complaint for want of an answer as by default. By this judgment every fact well pleaded in the complaint and necessary to sustain it was determined according to the statement thereof in the complaint. The rule is laid down in Bigelow on Estoppel (p. 27) as follows: "Judgment by default, like judgment on contest, is conclusive of all what it actually professes to decide as determined from the pleadings."

In the case in question it was alleged in the complaint that the officers of the defendant who executed this lease were duly authorized to do so by a resolution of its board of directors. This was a material allegation and an element of the plaintiff's right to recover, and I think it is not open to further controversy between these parties, and that the defendant cannot now be heard to gainsay it.

I do not question but that the defendant in this or any action subsequent to the first one on this lease may controvert this allegation by matter in confession and avoidance thereof, but in my judgment it is estopped to do so by a direct denial or any averment inconsistent with the fact that such a resolution was formally passed by the defendant's board of directors.

The judgment set up in the third reply was given in this court in an action commenced on June 25, 1885, for three several installments of expense money which the defendant in and by said lease covenanted to pay the plaintiff, in addition to the rental, on May 15 and November 11, 1884, and May 15, 1885, for the purpose of

enabling it "to keep up its corporate organization and to pay its officers and office expenses." On July 21 the defendant answered the complaint, alleging that on March 18 the plaintiff had commenced two actions and on June 11, 1885, a third one for the three semi-annual installments of rent falling due under said lease at corresponding periods with the installments of expense money sued for in the action, and that said actions were still pending. To this answer there was a demurrer; which being overruled, judgment was given for the plaintiff for the sum sued for as by default.

The only question determined on the demurrer is that the pendency of the prior actions for rent was not a bar to the one for the expense money, but the final judgment for want of an answer determined whatever was necessary to sustain the same, including, in my judgment, the allegation that the lease was executed by the defendant's president and secretary in pursuance of a resolution duly passed by its board of directors.

The case of Cromweil *v.* County of Sac (94 U. S., 351) is cited by counsel for defendant in support of the proposition that a judgment by default is only an admission for the purposes of the case, and is not conclusive of any matter in another action on a different claim or demand between the same parties.

The point decided in that case had no relation to a judgment by default. Briefly it was this:

A party is not estopped in an action on interest coupons attached to bonds issued by the defendant county to prove, if necessary, that he acquired the same for value before maturity, because in a former action against said county on other coupons attached to bonds of the same series he failed to make such proof, and therefore had judgment against him.

The opinion of the Court, by Mr. Justice Field, is learned and instructive, and considers the doctrine of estoppel by adjudication in various phases and at some length; but the reason of this particular ruling must be that, in the nature of things and of the case, there was no ground for presuming or inferring that the plaintiff acquired the coupons sued on in each action at the same time and under the same circumstances.

But a judgment in the first action that the bonds were absolutely valid or invalid would have been conclusive in any subsequent action between the same parties on any bond or its coupons of the same series or transaction. Beloit *v.* Morgan, 6 Wall., 619. In my judgment, the issues arising on these two replies must be found for the plaintiff.

I admit the questions involved are not free from difficulty, and what I have heretofore characterized as the "conglomerate" style of the answer has not made them any less so; and if the binding force of the lease was not so clearly established by the evidence on the issue of ratification, and rested on the force and effect of these adjudications alone, I confess I would give judgment for the plaintiff with some hesitation.

For it may be that an admission or determination on judgment by default that the lease was executed in pursuance of a resolution

passed at a meeting of the defendant's board of directors ought not and does not conclude the defendant on the question of whether such meeting was a legal one, generally, and, if so, whether it was qualified, under the circumstances, to pass this particlar resolution; but thinking that everything requisite to the legality of the meeting and its power to pass the resolution is fairly implied and included in the admission or determination that the officers of the defendant were duly authorized to execute the lease by a resolution of its board of directors, I have concluded otherwise.

In the second special defense contained in the answers in the actions numbered 1120 and 1143 it is alleged that on July 29, 1885, in an action then pending in this court between the parties hereto "for the same cause of action as that set forth in the complaint herein," judgment was duly given against the defendant herein for the sum of $1,028.32, with costs and disbursements amounting to $27, which judgment was in August following fully satisfied by the defendant herein.

In the reply thereto the plaintiff denies that in any action whatever between the parties hereto for the same cause of action any judgment was given against the defendant for $1,028.32 or any other sum, and denies that the plaintiff ever commenced any other action than this against the defendant for the cause of action set forth in the complaint herein. The evidence shows that the judgment mentioned in the defense is the one given in the action already referred to, which was commenced on June 25, 1885, to recover the several installments of expense money falling due under the lease on May 15 and November 11, 1884, and May 15, 1885. The action numbered 1120 was commenced on March 18, 1885, for an installment of rent falling due on November 11, 1884, and the one numbered 1143 on June 11, 1885, for an installment of rent falling due on May 15, 1885.

From this statement it appears, in short, that on July 29, 1885, when the judgment was obtained in the action for the installments of expense money, these two actions for installments of rent were pending, and that they were also pending when the former action was commenced.

If the action in which the judgment was given was for the same cause of action as that on which the pending actions are brought, such judgment is a bar thereto. In Hughes *v.* Dundee M. T. I. Co. (26 Fed. Rep., 831) this court held that a claim by an attorney for services to a loan company as its regular attorney during a period of years constituted but one cause of action, and that a recovery in an action for part of the claim was a bar to an action for the remainder.

In the course of the opinion of the court (26 Fed. Rep., 833) it said:

"The defense is not an estoppel, but a bar founded on a rule of public policy as just and expedient as the statute of limitations. This rule declares that no one ought to be twice vexed for the same cause—*nemo debet bis vexari pro eadem causa.* It assumes that it is better that a plaintiff who wantonly or negligently splits a claim

into parts for the purpose of suit should lose one of them than that the adverse party should be needlessly harassed by litigating in detail matters that could and should have been determined in one action."

But it is not always easy to decide whether two or more items or claims constitute one or more demands or causes of action, and the decisions of the courts, as might be expected, are not harmonious on the subject. In some cases the courts have undertaken to prescribe a test of indivisibility, as that two or more items constitute but one demand if the same evidence is applicable in whole or — part to both, or if they all arise out of one contract or transaction. Taylor *v.* Castle, 42 Cal., 372; Secor *v.* Sturgis, 16 N. Y., 558.

137 But these tests have not been found satisfactory, and each case must be decided largely on its own circumstances. Dulaney *v.* Payne, 101 Ill., 332.

On this point counsel for the defendant cites Reformed P. D. Church *v.* Brown, 54 Barb., 191. This is an extreme case and the ruling in it that where several claims, payable at different times, arise out of the same contract or transaction all that are due must be included in the same action and a recovery in an action on any one will bar a recovery in a subsequent action on the others or any of them has been practically reversed in the court of appeals in Perry *v.* Dickinson, 85 N. Y., 345, in which it was held that after a recovery in an action for a wrongful dismissal of the plaintiff from the defendant's employ the plaintiff might still maintain an action to recover the wages earned by him and due and payable before such wrongful dismissal.

In Dulaney *v.* Payne, 101 Ill., 325, it was held that a recovery in an action on a stipulation in a promissory note for the payment of interest on the principal sum therein one year after the note became due was not a bar to a subsequent action for said sum. The interest and the principal were considered distinct demands, arising on distinct contracts and constituting distinct causes of action, which the plaintiff might unite in one action or not, at his pleasure.

In Sparhawk *v.* Wills, 6 Gray, 163, it was held, on a bill to redeem certain premises mortgaged to secure the payment of a promissory note payable "in one year, with interest annually," that the principal debt was not merged in a judgment obtained for one year of such interest after the note became due; and in Andover Savings Bank *v.* Adams, 1 Allen, 28, it was held that a judgment for instalments of interest on a note after the same became due did not bar a subsequent action for the principal.

In Merchants' Ins. Co. *v.* Algeo, 31 Pa. St., 446, it was held that a recovery in an action on a breach of a covenant in a written instrument is no bar to recovery in another action on the same instrument for another breach, and although it is not stated in the report in so many words that the breach sued on in the subsequent action had occurred before judgment was obtained in the first one, it is plainly so implied from the circumstances.

In McIntosh *v.* Lown, 49 Barb., 550, it was held that where a lease contained several distinct covenants, and during the term there was

a breach of two of them, namely, to keep the buildings in repair and to build 125 rods of fence, that such breaches constituted distinct causes of action, and a recovery in an action on one of them after the expiration of the lease was no bar to a subsequent action on the other. In the course of the opinion it is said that these two covenants "are as entirely distinct as if they were contained in separate written contracts."

The lease in this case is a voluminous document, with many distinct stipulations and provisions. The first clause contains the grant of the road to the defendant for the term of 96 years, it "yielding and paying therefor during the said term the yearly rent of £28,000," to be paid in equal half-yearly installments, on May 15 and November 11 in each year, in advance. By clause five the defendant's covenant to pay "the yearly rent hereinbefore reserved" in the manner specified, and by clause twenty-two the defendant's covenant to pay the plaintiff "every year during the term, at the same time and place as the rental herein specified, the sum of £600 sterling money, for the purpose of enabling the lessors to keep up their corporate organization and to pay their officers and office expenses."

In my judgment, on both principle and authority, the rent and expense money provided for in this lease are distinct demands, arising on distinct contracts, and the mere fact that they are included in the same instrument and are a part of the same transaction and made payable at the same time and place does not make them otherwise.

And primarily they are distinct demands, because it appears to have been the will and pleasure of the parties to the transaction that they should be so. It was easy enough to have added the £600 to the £28,000 and make it all rent and payable as such, but the parties who arranged the lease, for reasons best known to themselves, saw proper to provide otherwise. The defendant is or was at the date of the lease equally interested with the plaintiff in keeping up the latter's corporate organization and thereby maintaining the existence of its lessor. Otherwise the plaintiff's organization might lapse and the road be taken possession of by the mortgagees or the State; and it is not difficult to imagine, in view of what might happen in this connection during a period of ninety-six years, that it was thought best to provide in the lease for the payment of a specific sum for this very purpose, so that the defendant might compel its application thereto for its own protection.

The parties to this transaction have, *ex industria*, distinguished these payments in name and purpose, and the law is not so arbitrary or unjust as to make them one indivisible demand and compel the plaintiff to sue for them in one action. For the convenience of the plaintiff the law will allow it to unite a claim for rent and expense money in one action (Code C. P., § 91), but the parties for their own purposes and convenience made them distinct demands, and therefore the law will not compel it to so unite them.

This issue must also be found for the plaintiff.

And the conclusion of law from the premises is that the plaintiff

is entitled to recover of and from the defendant the sum demanded in each action, namely, in No. 1120, $68,131, with legal interest from November 11, 1884; in No. 1143, $68,131, with interest from May 15, 1885; in No. 1178, $68.131, with interest from November 11, 1885, and in No. 1179, $1,459.95, with interest from November 11, 1885, together with costs and disbursements.

Evidence was also introduced on the trial by the plaintiff to prove the organization and corporate existence and power of the plaintiff. The evidence consists of the depositions of Thomas Thornton and David Ferguson, of Dundee, Scotland, the former being a solicitor in that country of thirty-three years' standing and the latter an accountant and secretary of the plaintiff since May 17, 1880, and John Reid, of Edinburg, a Scottish advocate and the registrar of joint-stock companies in Scotland under the British statute, "the companies act of 1862," and the amendments of 1867 and 1877, and the exhibits thereto annexed. The depositions were taken under a commission of this court, dated October 8, 1884, in the action numbered 1035 and then pending in this court between the same parties. Code of C. P., § 819.

From this evidence it satisfactorily appears that the plaintiff was duly organized under said companies act on April 30, 1880, with power to construct, own, operate, lease, or otherwise dispose of the road in question, and that a certificate to that effect was duly made and issued to it by the registrar of joint-stock companies under said act on May 4, 1880. Dundee M. T. I. Co. *v.* Cooper, 26 Fed. Rep., 665.

But I am not advised that there is any issue in the pleadings on this point since the allowance of the demurrers to the answers.

However, if the plaintiff's counsel think they are entitled to a finding in this matter they can have it.

Mr. Earl C. Bronaugh and Mr. John W. Whalley, for the plaintiff.

Mr. Charles B. Bellinger, for the defendant.

(Signed) MATTHEW P. DEADY,
U. S. District Judge, Oregon.

Endorsed: Filed Sept. 20, 1886. R. H. Lamson, clerk.

138 And afterwards, to wit, on the 20 day of Sept., 1886, there was duly filed in said court a motion in words and figures as follows, to wit:

139 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY & NAVIGATION COMPANY, Defendant. } No. 1120.

Now, on this day, comes the plaintiff, by Whalley, Bronaugh, Northup & Deady, its attorneys, and moves the court for judgment

in plaintiff's behalf against the defendant for the sum of $68,131, with interest thereon since Nov. 11, 1884, aggregating the sum of seventy-eight thousand two hundred and fifty-nine and $\frac{80}{100}$ (78,259.80) dollars, in accordance with the findings of fact and conclusion of law made and found by the court and filed in this cause.

WHALLEY, BRONAUGH, NORTHUP & DEADY,
Attorneys for Plaintiff.

Endorsed: Filed September 20, 1886. R. H. Lamson, clerk.

140 And afterwards, to wit, on Monday, the 20 day of Sept., 1886, the same being the 74 judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

141 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1120.

SEPTEMBER 20, 1886.

Now, at this day, comes the plaintiff, by Mr. Earl C. Bronaugh, of counsel, and moves the court for judgment upon the findings of the court heretofore entered in this cause; which motion is allowed. Whereupon it is considered that said plaintiff do have and recover of and from said defendant the sum of seventy-eight thousand two hundred and fifty-nine dollars and eighty cents, together with its costs and disbursements herein, taxed at eighty-nine dollars and twenty-six cents.

142 And afterwards, to wit, on the 21 day of Sept., 1886, there was duly filed in said court a cost bill in words and figures as follows, to wit:

143 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant. } No. 1120.

Statement of disbursements claimed in the above-entitled cause, viz:

Clerk's fees	$62 30
Marshal's fees	6 96
Costs in lower court	

Advertising	
Depositions	
Attorney's fee	20 00
Attorney's fee for taking depositions, at $2.50 each	
Master's fees	
Referee's fees	
Disbursements	
Witness fees	
Total taxed at	$89 26

R. H. LAMSON, *Clerk.*

[Endorsed:] In the —— court of the United States for the district of Oregon. —— ——, plaintiff, *vs.* —— ——, defendant. Cost bill. (Original endorsed.) Filed Sept. 21, 1886. R. H. Lamson, clerk, by —— ——, deputy clerk.

DISTRICT OF OREGON, *ss:*

I, Earl C. Bronaugh, being duly sworn, say that I am one of the attorneys of record of The Oregonian Railway Company, Limited, plaintiff in the above-entitled cause; that the costs and disbursements set forth above have been necessarily incurred in the prosecution of this suit, and that plaintiff is entitled to recover the same from the defendant.

EARL C. BRONAUGH.

Subscribed and sworn to before me this Sept. 21, 1886.

R. H. LAMSON, *Clerk,*
By —— ——, *Deputy Clerk.*

144 And afterwards, to wit, on the 21 day of Sept., 1886, there was duly filed in said court a bond on appeal in words and figures as follows, to wit:

145 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant. } No. 1120.

Know all men by these presents that we, the above-named defendant, The Oregon Railway and Navigation Company, and W. S. Ladd, C. H. Lewis, Henry Failing, and H. W. Corbett, are held and firmly bound unto the plaintiff, The Oregonian Railway Company, Limited, and unto all concerned in the sum of one hundred thousand dollars, to be paid to the said Oregonian Railway Company, Limited, and unto all concerned, executors or administrators; to which payment, well and truly to be made, we bind ourselves

and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated September 21, 1886.

Whereas the above-named defendant, The Oregon Railway and Navigation Company, has taken a writ of error — the Supreme Court of the United States to reverse the judgment in the above-entitled cause by the circuit court of the United States for the district of Oregon:

Now, therefore, the condition of this obligation is such that if the above-named Oregon Railway and Navigation Company shall prosecute said writ of error to effect and answer all costs and damages if *he* shall fail to make good *his* plea, then this obligation shall be void; otherwise to remain in full force and virtue.

OREGON RAILWAY & NAVIGATION CO., [SEAL.]
By W. S. LADD, *Vice-Pr.* [L. S.]
W. S. LADD. [L. S.]
HENRY FAILING. [L. S.]
C. H. LEWIS. [L. S.]
H. W. CORBETT. [L. S.]

Signed, sealed, and delivered in presence of—
C. B. BELLINGER.
E. E. MALLORY.

UNITED STATES OF AMERICA, }
District of Oregon, } *ss*:

I, W. S. Ladd, and I, C. H. Lewis, each for *him*self, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident and freeholder within said district, and that I am worth in property situated therein the sum of one hundred thousand dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

W. S. LADD.
C. H. LEWIS.

Subscribed and sworn to before me this Sept. 21, 1886.

E. E. MALLORY,
[SEAL.] *Notary Public.*

146 & 147 UNITED STATES OF AMERICA, }
District of Oregon, } *ss*:

I, Henry Failing, and I, H. W. Corbett, each for myself, being duly sworn, depose and say that I am one of the sureties in the foregoing bond; that I am a resident and freeholder within said district, and that I am worth in property situated therein the sum of one hundred thousand dollars over and above all my just debts and liabilities, exclusive of property exempt from execution.

HENRY FAILING.
H. W. CORBETT.

Subscribed and sworn to before me this Sept. 21, 1886.

E. E. MALLORY,

[SEAL.] *Notary Public for Oregon.*

Approved.

DEADY, *J.*

[Endorsed:] No. 1120. U. S. circuit court, district of Oregon. Or. R'y Co. L'd, *vs.* O. R. & N. Co. Bond. Filed Sept. 21, 1886. R. H. Lamson, clerk, by —— ——, deputy clerk.

148 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Pl'ff,
vs.
THE OREGON RAILWAY & NAVIGATION COMPANY, Def't. } No. 1120.

Copy.

Bill of Exceptions. Filed Oct. 13, 1886. *R. H. Lamson, Clerk.*

149 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY & NAVIGATION COMPANY, Defendant. } 1143.

Bill of Exceptions.

Be it remembered that on May 17, 1886, this cause came on to be heard before the court on stipulation of the parties without the intervention of a jury, and the plaintiff, to sustain the issues on its part, offered in evidence the depositions of Thomas Thornton, David Ferguson, and John J. Reid, which depositions were taken in the case of the above plaintiff against the above defendant, numbered 1035. The defendant, by its attorney, duly objected to the evidence so offered on the ground that the same is incompetent and immaterial, but the court overruled such objection; to which order of the court defendant, by its attorneys, duly excepted at the time, which exception was allowed by the court. The said depositions were read in evidence and were to the effect as follows:

The said Thomas Thornton deposed that he is a solicitor, instructed in the laws of Scotland, and is acquainted with the plaintiff corporation; that his late firm, Pattullo & Thornton, were and his present firm, Thos. Thornton, Son and Company, are solicit-
150 ors for said company in Scotland; that he has seen the original memorandum of association and articles of association of the said company; that such memorandum and articles were prepared and executed under the supervision of said late firm of Pattullo & Thornton and are now in the hands of the registrar of joint-

stock companies in Scotland, in Edinburgh; that such registrar is the legal custodian thereof. Said witness further deposed that he produced a copy of such memorandum of association and of such articles of association; that he had compared such copies with the originals, and that the copies so produced are true copies of such originals; that he has examined the signatures of said memorandum of association and the names of the persons by whom the same purport to have been executed; that he is acquainted with the signatures and writing of such persons, and that said signatures are the genuine signatures of such persons; that said memorandum of association and articles of association were duly and regularly made and executed according to the laws of Scotland and in accordance with the provisions of the companies act of 1862; that he, said witness, was engaged in his professional capacity in and about the procuring of the registration of the said memorandum and articles of association; that the registrar of joint-stock companies at that time in Scotland was Stair Agnew; that witness is acquainted with the handwriting of said registrar and has seen a certificate of the incorporation of the plaintiff corporation, The Oregonian Railway Company, Limited, purporting to be signed by the said Stair Agnew, and that the signature thereto is in the handwriting of said Stair Agnew.

Said witness further deposed that he produced a copy of the said certificate of incorporation; that he is acquainted with the handwriting of John J. Reid, registrar of joint-stock companies
151 in Scotland, who is now the legal custodian of the memorandum of association and articles of association of the said Oregonian Railway Company, Limited.

Said witness further deposed that he produced copies of said memorandum and articles, which are certified by the said Reid to be true copies of the originals thereof; that the said certificates are in the handwriting of said Reid, and were made by him in the presence of witness.

Said witness further deposed in his said deposition that, as a qualified and practicing lawyer, the organization of the said Oregonian Railway Company, Limited, as an incorporated company under the laws of Great Britain and Ireland is in all respects regular and complete; that the memorandum of association and the articles of association of the said company are in all respects valid and lawful; that the said company was duly and lawfully incorporated on May 4th, 1880, and has ever since been and now is a lawful and subsisting corporation under and by virtue of the laws aforesaid; that since said May 4th, 1880, said company has continuously exercised its corporate powers, has held regular meetings of shareholders, as required by its articles, has duly elected directors, and has carried on its corporate business in all manner according to law.

Said witness further deposed that he produced a certificate of the incorporation of said company, given by said John J. Reid, registrar of joint-stock companies in Scotland and the officer referred to in the companies act of 1862; that the signature to the said certificate is the genuine signature of the said Reid and is in his hand-

writing, and that the said certificate is such a certificate of the in-
152 corporation of the company as is referred to in § 18 of the said companies act of 1862 in the words following: "A certificate of the incorporation of any company given by the registrar shall be conclusive evidence that all the requisitions of this act in respect to registration have been complied with," and said witness further deposed that the certificate so produced is by the law of Scotland conclusive evidence that, with respect to the said Oregonian Railway Company, Limited, all the requisitions of the said companies act have been complied with.

The said witness further deposed that he had examined the laws of Oregon, Civil Code, chapter 8, title 5, section 733, paragraph 8, and that according to the practice of that country, Scotland, it is impossible to obtain any certificate under the great or principal seal thereof or the sovereign thereof to the effect as in such statute provided with reference to the copies of the memorandum or articles of association of a company under the companies act of 1862 certified by the legal keeper thereof.

153 The deposition of the said David Ferguson tended to show that he had seen the original memorandum of association and articles of association of the said Oregonian Railway Company, Limited, and that he produced copies thereof which are true copies of such originals; that he is acquainted with the signatures to such articles and memorandum, and that the same are genuine; that the certificate of incorporation and the memorandum of association and articles of association referred to in the deposition of said Thomas Thornton are in all respects properly executed, and that the copies referred to in such depositions are genuine copies of the originals, which are now in the hands of the registrar of joint-stock companies in Scotland, who is the legal custodian thereof; that he, witness, is and has been since May 17th, 1880, the secretary of plaintiff corporation; that said memorandum and articles of association are signed by persons named by the witness Thornton in his deposition, and that said signatures are known to witness to be the genuine signatures of said persons respectively; that Stair Agnew was at the time of the making of the said memorandum and articles of association registrar of joint-stock companies in Scotland; that witness, as secretary of plaintiff, holds a certificate of the registration of plaintiff corporation signed by said Stair Agnew as such registrar, of which certificate witness testified that he produced a true copy; that John J. Reid is at present registrar of joint-stock companies for Scotland, and is the legal custodian of said memorandum and articles of association of which said witness testified that he produced copies duly certified by said Reid as registrar in the presence of witnesses.

154 The deposition of said John J. Reid tended to show that he is the registrar of joint-stock companies in Scotland, and is the custodian of the original memorandum of association and articles of association of all companies incorporated under the companies act of 1862, and that the copies produced by said witness Thornton are true copies of the original articles and memorandum

of association of said plaintiff corporation, and are duly certified by witness as registrar to be such copies.

155 The following printed pages, numbered in printed figures from 12 to 33, inclusive, comprise copies of the memorandum of association and of the articles of association of the Oregonian Railway Company, Limited, as produced by said witnesses Thornton and Ferguson and referred to by the witness Reid in their said depositions.

156 "*The Companies Acts*—1862, 1867, *and* 1877."

Company limited by shares.

Memorandum of Association of the Oregonian Railway Company, Limited.

1. The name of the company is the "Oregonian Railway Company, Limited."

2. The registered office of the company will be situate in Scotland.

3. The objects for which the company is established are—

First. The building, constructing, reconstructing, diverting, equipping, owning, operating, leasing or selling, transferring or disposing of, or purchasing or otherwise acquiring, holding, and operating, or otherwise using, working, or dealing in all or any such railway or railways, railroad or railroads, in the State of Oregon and the Territory of Washington, in the United States of America, or in either of them, or between such points in said State or Territory or elsewhere in North America as may from time to time be resolved or determined upon by said company, and the carrying of passenger, goods, and mineral and all other traffic and freight on and the doing and performing of all other acts, deeds, and other operations connected with railways and railroads in the said State and Territory or either of them or elsewhere in North America.

Second. The building, constructing, equipping, owning, and operating, or the leasing, selling, transferring, holding, or acquiring by purchase or otherwise, and the working and using of one or more lines or portions of lines of railroad or railway or parts thereof from (first) the city of Portland or the city of Astoria, in the State of Oregon, United States of America, or from either or both of said cities, or from some other point or place on the Willamette or Columbia rivers, in said State of Oregon, through any part or portion of the said State of Oregon lying west or south of the Cascade range of mountains, in said State, to some point at or near, in or upon, said Cascade range of mountains; (second) from thence or from any part or portion of the western or southwestern part of said State of Oregon to and across and to the east side of said Cascade range of mountains, through a pass in said mountains at or near that fork or branch of the Willamette river, in said State of Oregon, known as the Middle fork or branch of said river, or through some other pass in said mountains within one hundred miles north or south of said

Middle fork or branch of said river where shall -- found to be, on actual survey, the easiest and most practicable route across the Cascade range of mountains; (third) thence through
157 that portion of said State of Oregon lying east of said Cascade range of mountains, and on through the Territories of Washington or Idaho or the States of Nevada and California, in the United States of America, or through all or any one or more of said States or Territories to a connection with, or without making any connection with, any other railway or railways in either of said States of Oregon, California, or Nevada or Territories of Washington or Idaho, and with or without one or more branch lines (*a*) running north, south, east, or west from said main line on the east side of said Cascade range of mountains, or (*b*) running from said main line on the west side of said Cascade range, in said State of Oregon, forming a junction or one or more junctions with said main line at one or more points to a terminus in said portion of the State of Oregon west of said Cascade range of mountains, or to a junction with said main line, or to a terminus or termini at one or more seaports on the shores of the Pacific Ocean, all as may from time to time be determined by actual surveys; as also to purchase, build, construct, own, equip, and operate, or to enter into agreements to run over, or to lease (1) any line or lines, branch or branches, of railway or railways, railroad or railroads, that may connect with or become attached to or meet or become part of the said main line or its main branch or any of its branches hereinbefore designated, or (2) such other main or branch line or lines or extensions of any railway or railways, railroad or railroads, made in connection with this company's main line or of any of its branches, or separate and distinct therefrom, all in such manner of way or form and on such terms as this said company shall from time to time deem advisable and for its interests, and the doing and performing of all other operations connected with said designated railway or railways, railroad or railroads, or branches thereof, or in connection with other railways of a similar or different nature the doing and performing of which this said company shall at any time deem advisable and for its interest in the carrying on of its business.

Third. The building, constructing, purchasing, or otherwise acquiring, holding, equipping, owning, and operating, or the leasing and operating, or the leasing, equipping, and operating, or the selling, transferring, or otherwise disposing of and the working and using of any other railway or railroad, or of any wharves, jetties, steamboat or steamship, stage, or of any canals, locks, bridges, clay road, plank road, turnpike, hack, truck, or express lines, or any other line, lines, or means for the transportation of freight or passengers, or either or both, now constructed or operated in whole or in part or which may be hereafter constructed or operated in whole or in part, in either of the said States of Oregon, California, or Nevada, or said Territories of Washington or Idaho, and that whether in connection with or separate and distinct from and as a line or means independent of said railway or railways, railroad or railroads, so to

be built, constructed, purchased, owned, equipped, or operated as aforesaid by this company.

Fourth. The entering into agreements for and the taking, holding, or the guaranteeing of bonds, shares, debentures, dividends, or mortgages and other indebtedness of any other railway or railroad company or companies, or of any canals, locks, bridges, clay road, plank road, turnpike, steamboat, steamship, stage, express, or telegraph companies in the United States of America or Dominion of Canada.

Fifth. The entering into agreements with any person, persons, firm, copartnership, company, or corporation that may be the owners and operators or the operators of any railway, railroad, steamboat, steamship, express, hack, truck, or stage line or lines, canals, locks, bridges, clay road, plank road, turnpike, or any other means of transporting freight or passengers, or either or both, and who may be in any manner or form engaged in the business or occupation of
158 common carriers or the transportation of freight and passengers, or either or both, for the prorating in fares and freights, or either or both, or for the joint use, occupation, and enjoyment of their several lines or the branches thereof, or of any or all other property, both real, personal, or both, owned or used by them or either of them respectively, or for the operating their respective lines on joint purse, or in any other manner and form for the mutual or joint or the mutual and joint transportation of freight and passengers, or either or both, over their respective lines of transportation.

Sixth. The building, constructing, equipping, owning, operating, leasing, selling, transferring, or otherwise disposing of, purchasing, or otherwise acquiring, holding, and operating, or otherwise using, working, or dealing in any telegraph or telephone line or lines, or any warehouse or warehouses, or building or buildings, for receiving or storing grain or other produce, in any manner connected with or unconnected with or requisite, necessary, or convenient for the operation of the main or any branch line of railway, railroad, or of any other means, manner, or line of transportation constructed, built, leased, or in any manner operated by or in connection with this company, in any manner or form whatsoever.

Seventh. The acquiring, by purchase or otherwise, or by donations or gifts of such real and personal property as this company may find requisite, necessary, or convenient for carrying into effect fully and completely the objects of the company and the transaction of its business, and to hold and dispose of the same at the pleasure of this company, and the acquiring, holding, leasing, transferring, and otherwise using and disposing of any real or personal property of whatever nature, or of any rights and privileges acquired or which from time to time — be acquired by the company, or which may be given, granted, or conveyed to it for the purpose of aiding it in the construction and operation of its aforesaid line or lines of railway or branches thereof or extensions therefrom, or for any or different purpose whatsoever; as also the acquiring under the laws of the States of Oregon, Nevada, or California or the Territories of Washington and Idaho or any other States or Territories in the

United States, under the laws of the United States or under the laws of the Dominion or of any Province of Canada, or under the laws of any one or more or all of them, of such real or personal property, or the right to the use or occupation of the same, by appropriation or otherwise, in such manner as is now or may hereafter and from time to time be provided by the laws of either of the said States or Territories in the United States, or by the laws of the United States or by the laws of the Dominion or of any Province of Canada, or either one or more or of all of them.

Eighth. The borrowing of money in the United States of America or in the United Kingdom of Great Britain and Ireland or in Europe or elsewhere on or on the security (first) of bonds or promissory notes or debentures or other deeds or obligations of the company; or (second) of bonds or promissory notes or other deeds or obligations of the company, containing also or separately secured by mortgage or trust deed of all or any portion of the company's property and assets, real or personal, or on all or any portion of its property and assets, real or personal, and of or on all or any of its franchises, powers, and privileges; or (third) of bonds or mortgage debentures, as also the raising of and procuring money by the creation and issue of preference shares or by the creation and issue of guaranteed shares, or by any other means or in any other manner or form which the company at any time deem advisable.

Ninth. The amalgamating or otherwise uniting the company with any other railway, railroad, steamboat, steamship, canal, lock,
159 bridge, stage, hack, truck, express, or telegraph or telephone company, or any other company or institution engaged in the business of the transportation of freight or passengers, or both, whose objects shall be wholly or partially similar to those of this company, or absorbing any such other company or institution or purchasing or acquiring its business on any terms and in any manner.

Tenth. The carrying on of the business of common carriers and the fixing and exaction of tolls and freights and the transacting and doing of all such other matters and things as the company shall from time to time consider conducive or incidental to the above objects or any of them; but the company shall not do anything whereby the limitation of the liability of its members shall be prejudiced; and,

Lastly, the doing whatever else may be from time to time sanctioned by a special resolution of the company.

4. The liability of the members is limited.

5. The capital of the company is one hundred and sixty thousand pounds, divided into sixteen thousand shares of ten pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectfully agree to take the number of shares in the capital of the company set opposite our respective names.

Dated this thirteenth day of April, eighteen hundred and eighty years.

Names, addresses, and description of subscribers.	Number of shares taken by each subscriber.
Airlie, of Cortachy Castle, Kirriemuir, in the county of Forfar	100
William Lawson, of Dundee, in the county of Forfar, merchant	100
Thomas H. Cox, of Dundee, in the county of Forfar, merchant	100
John Leng, of Kimbrae, Newport, in the county of Fife, newspaper proprietor	100
P. M. Cochrane, of Dundee, in the county of Forfar, merchant	100
Alex. Henderson, of Dundee, in the county of Forfar, merchant	100
Alex'r Nicoll, of Dundee, in the county of Forfar, merchant	100
James Stevenson, of Dundee, in the county of Forfar, dyer	100
John M. Watson, of Dundee, in the county of Forfar, stockbroker	100
William Mackenzie, of Dundee, in the county of Forfar, stockbroker	50
Total shares taken	950

Witness to the above signatures:

WM. ARTHUR BELL,
Apprentice to Messrs. Pattulo & Thornton, Solicitors, 1 Bank Street, Dundee.

That on the said 30th day of April, 1880, in pursuance of the provisions of law in the said "the companies act of 1862," hereinbefore mentioned, and of the other provisions of the acts supplementary thereto and amendatory thereof, and contemporaneously with the execution of the memorandum of association aforesaid, the said Airlie, of Cortachy Castle, Kerriemuir, in the county of Forfar; William Lowson, of Dundee, in the county of Forfar, merchant; Thomas H. Cox, of Dundee, in the county of Forfar, merchant; John Leng, of Kimbrae, Newport, in the county of Fife, newspaper proprietor; P. M. Cochrane, of Dundee, in the county of Forfar, merchant; Alex. Henderson, of Dundee, in the county of Forfar, merchant;
160 Alex. R. Nicoll, of Dundee, in the county of Forfar, merchant; James Stevenson, of Dundee, in the county of Forfar, dyer; John M. Watson, of Dundee, in the county of Forfar, stockbroker; William McKenzie, of Dundee, in the county of Forfar, stockbroker, did enter into and make and duly execute articles of association, as required by said acts, and thereupon did, on the said 30th day of April, 1880, duly deliver them to the registrar of joint-stock companies, as required by section seventeen of said "the companies act of 1862," who thereupon did duly retain and register the said memorandum and articles of association, and did duly thereupon certify under his hand the said "The Oregonian Railway Company, Limited," to be incorporated and said company to be limited, which articles of association are in the words and figures and to the effect following—that is to say:

161 *Articles of Association of the Oregonian Railway Company, Limited.*

1. The regulations of table A in the first schedule to "the companies act, 1862," shall not apply to this company, except so far as the same are repeated or contained in these articles.

Capital.

2. The original capital shall be £160,000, divided into 16,000 shares of £10 each, which, so far as not subscribed for in the memorandum and articles of association, may be allotted and issued to such persons as the directors may consider proper.

3. The registered holders of shares in the company for the time being, whatever the number issued or subscribed, shall be and continue associated, and the business of the company may be at once commenced, and the regulations for the management of the company shall be in force. Every person to whom any share or shares shall have been allotted in consequence of any application from him shall be deemed to be a member of the company, along with all subscribing members, and shall be entered as a member upon the register of members.

4. The company may, by the resolution of a general meeting, increase its capital beyond the amount mentioned in the memorandum of association by the creation of new shares, of such amounts per share and in the aggregate and on such terms as such resolution shall direct; and any new capital so created may carry such preferential right to dividend or such priority in the distribution of assets or be subject to such postponement of dividends or in the distribution of assets as any resolution of a general meeting passed previously to its issue shall direct; but, save as aforesaid, all new capital shall be subject to the same provisions in all respects as if it had been part of the ordinary capital mentioned in the memorandum of association.

5. The shares or any class of shares may from time to time be consolidated into a smaller number of shares or divided into a larger number of shares, or the capital may be reduced by such resolutions and proceedings as the law requires.

Shares.

6. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share or for any interest on prepaid calls.

7. Every member shall be entitled to a certificate under the common seal of the company, specifying the share or shares held by him and the amount paid up or deemed to be paid up thereon;
162 and if such certificate be worn out or lost it may be renewed on payment of five shillings or such less sum as the directors may prescribe.

8. The company shall not be bound by or recognize, even though

having notice thereof, any other right in respect of a share than an absolute right thereto in the registered holder thereof for the time being, and such right in case of transmission as hereinafter mentioned.

Transfer of shares.

9. The instrument of transfer of any share in the company shall be executed both by the transferrer and the transferee, and the transferrer shall be deemed to remain the holder of such share until the name of the transferee is entered in the register book in respect thereof.

10. All transfers of shares of the company shall be valid and effectual if executed according to the usual mode of executing such instruments by the law of Scotland or by the law of England, or partly according to the one and partly according to the other.

11. The directors may decline to register any transfer of shares made by a member who is indebted to the company or to any person not approved by them.

12. Every deed of transfer must be left at the office of the company to be registered, accompanied with such evidence as the directors may reasonably require to prove the title of the transferrer and with the payment of such fee as the directors shall from time to time determine, and thereupon the company, subject to the powers vested in the directors by the immediately preceding article, shall register the transferee as a shareholder and retain the deed of transfer.

13. In no case shall the directors be bound to enquire into the validity, authority, legal effect, or genuineness of any deed of transfer produced by a person claiming as a transferee of any share in accordance with these articles, and, whether they abstain from so enquiring or do so enquire and are misled, the transferrer shall have no claim whatsoever upon the company in respect of the share, except for the dividends previously declared in respect thereof, but only, if at all, upon the transferee.

14. The transfer books may be closed during the fourteen days immediately preceding any general meeting or any issue of new shares.

Transmission of shares.

15. The executors or administrators of a deceased member shall be the only persons recognized by the company as having any title to his shares.

16. Any person becoming entitled to a share in consequence of the death or bankruptcy of any member or in consequence of the marriage of any female member may, upon such evidence being produced as may from time to time be required by the directors, either be registered himself as a member or execute a transfer of the share to his nominee, subject to the approval of said nominee by the directors.

Calls on shares.

17. The directors may from time to time make such calls upon the members in respect of all moneys unpaid on their shares as they may

think fit, provided that four weeks' notice at least is given of each call.

18. Each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors, and in case of default to pay interest for the same
163 at the rate of £10 per cent. per annum from the day appointed for payment thereof to the time of the actual payment, and joint holders of shares shall be so liable severally as well as jointly in respect of all calls thereon.

19. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys payable upon the shares held by him beyond the sums actually called up, and the moneys so paid in advance or so much thereof as shall from time to time exceed the amount of the calls then made upon the shares in respect of which such advance shall have been made may, as the directors and the members paying the same may agree, be treated either as payments in advance in respect of such shares, entitling the holders thereof for the time being to dividends, at the same rates as if such moneys had been paid up in pursuance of calls, or as loans at such interest and on such terms as the members paying such sums in advance and the directors shall agree upon.

Lien on shares.

20. The company shall have a first charge or paramount lien on all shares for all moneys due to it from the holder or any of the joint holders thereof, either alone or jointly with any other person, including all calls the resolution for which shall have been passed by the directors, although the times appointed for their payment may not have arrived.

21. Such lien may be made available by a sale of all or any of the shares subject to it, provided that no such sale shall be made except under a resolution of the directors and until notice in writing shall have been given to the indebted member or his executors or administrators requiring him or them to pay the amount for the time being due to the company, and default shall have been made for twenty-eight days from such notice in paying the sums thereby required to be paid.

22. In case of such sale the directors shall apply the clear proceeds, after the payment of any expenses, in or towards satisfaction of such debt, and the residue, if any, shall be paid to the late member, his executors, administrators, or assigns.

Forfeiture of shares.

23. If any member fails to pay any call on the day appointed for payment thereof, the directors may, at any time thereafter during such time as the call shall remain unpaid, serve a notice on him requiring him to pay such call, together with the interest and any expenses that may have accrued by reason of such non-payment.

24. The notice shall name a further day, not less than fourteen days after the day first appointed, on or before which such call and

all interest and expenses accrued by reason of such non-payment are to be paid. It shall also name the place where payment is to be made, the place so named being either the registered office of the company or some other place at which the calls of the company are usually made payable. The notice also shall state that in the event of non-payment at or before the time and at the place appointed the shares in respect of which such call was made will be liable to be forfeited.

25. If the requisitions of any such notice as aforesaid be not complied with, any share in respect of which such notice shall have been given may at any time thereafter, before payment of any calls, interest, and expenses due in respect thereof shall have been made, be forfeited by a resolution of the directors to that effect.

26. If any such person as mentioned in article 16 shall not, during three months after being thereto required by notice from the
164 directors, be registered or cause a nominee to be registered under that article, or if, for six months after the death or bankruptcy of a member or marriage of a female member, no person shall be registered in respect of his or her shares under article 16, the shares may be forfeited by a resolution of the directors to that effect, together with all dividends declared thereon since the death, bankruptcy, or marriage of the late member.

27. Any forfeited share shall be deemed to be the property of the company, and may be resold, re-allotted, or disposed of in such manner as the directors shall think fit.

28. Any member whose shares have been forfeited shall notwithstanding be liable to pay to the company all calls owing upon such shares at the time of forfeiture and the interest thereon.

29. A certificate in writing, under the seal of the company and the hands of two directors and countersigned by the secretary, that a share has been duly forfeited in pursuance of the regulations of the company or sold under article 21 shall be conclusive evidence of such forfeiture or sale, and also in favor of the purchaser of its regularity and validity, so that the remedy of any person aggrieved shall be against the company and in damages only, and an entry of every such certificate shall be made in the minutes of the proceedings of the directors.

30. On any sale by the directors of forfeited shares or of shares sold under article 21 the purchaser shall be registered as the proprietor of the shares, and shall receive a certificate of such proprietorship under article 7, and shall hold the shares discharged from all calls due prior to his purchase, and he shall not be bound to see to the application of the purchase-money.

31. The directors may in their discretion remit or annul the forfeiture of any share within one year from the date thereof upon payment of all monies due to the company from the late holder or holders of such share or shares and all expenses incurred in relation to such forfeiture.

Share warrants.

32. The company may issue share warrants in respect of paid-up

shares. Subject to the provisions of these articles and of the companies act, 1867, the bearer of a share warrant shall be deemed to be a member of the company to the full extent.

33. The stamp duty on every share warrant and all other expenses of or incident to its issue shall be borne by the person applying for it.

34. In the case of the loss of any share warrant a new one may be issued to the person claiming in respect of it or such person may be entered in the register of members, but only on his producing such evidence of his title and of the loss of his warrant as the directors shall consider satisfactory and on his giving to the company such indemnity, with or without security, as the directors shall require.

General meetings.

35. The first ordinary general meeting shall be held at such time within four months after the incorporation of the company as the directors may determine, and thereafter an ordinary general meeting shall be held annually at such time and place as the directors may annually determine.

36. The directors may, whenever they think fit, and they shall, upon a requisition made in writing by four or more members of the company holding in the aggregate shares to the nominal amount of one-tenth of the issued capital for time being of the company, convene an extraordinary general meeting.

165 37. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company, but no member shall be qualified to sign a requisition who shall be under the disabilities mentioned in article 51 and article 52 or any of them.

38. Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within fourteen days from the date of the requisition, the requisitionists or any other four or more members holding the required amount of shares may themselves convene an extraordinary general meeting.

39. The directors or members convening any meeting shall give seven days' notice at least, specifying the place, the day, and the hour of meeting, and, in case of special business, the general nature of such business, to the members in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice shall not invalidate the proceedings at any general meeting.

40. All business shall be deemed special that is transacted at an extraordinary meeting as well as all business that is transacted at an ordinary meeting, with the exception of choosing a chairman (if necessary), sanctioning a dividend, electing directors and officers, considering the accounts and the report of the directors, and passing any resolution relating to or arising out of the subject-matter of such report.

Proceedings at general meetings.

41. No business shall be transacted at any general meeting, except the choice of a chairman (if necessary) and the declaration of a dividend, unless four members shall be present in person or by proxy at the time when the meeting proceeds to such business.

42. If within half an hour from the time appointed for the meeting a quorum (as defined by the clause immediately preceding) be not present, the meeting, if convened upon the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at such adjourned meeting a quorum be not present it shall be adjourned *sine die*.

43. The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company.

44. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the directors present shall choose one of their own number to act as chairman, and, that failing, the members present and entitled to vote shall appoint some one of their own number to be chairman.

45. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

46. At any general meeting, unless a poll is demanded by at least three of the members present in person or by proxy and entitled to vote, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact without proof of the number or proportion of votes recorded in favor — or against such resolution.

166 47. If a poll is demanded by three or more members present in person or by proxy and entitled to vote it shall be taken in such manner as the chairman directs, and the result of such poll as declared by the chairman shall be deemed to be the resolution of the company in general meeting.

48. Minutes shall be made in books provided for the purpose of all resolutions and proceedings of general meetings, and any such minutes, if signed by any person purporting to be chairman of the meeting to which they relate or by any other person present thereat and appointed by the board of directors to sign the same in his place, shall be receivable as evidence of the facts therein stated without further proof; but if such minutes be signed otherwise than by the chairman of the meeting to which they relate they shall be read to the next succeeding meeting, and on being found or made correct shall be signed by the chairman thereof.

Votes of members.

49. Every member shall have one vote for every share held by

him, and in case of an equality of votes at any general meeting or poll the chairman shall, in addition to the votes to which he otherwise may be entitled, have another or casting vote.

50. If two or more persons are jointly entitled to a share or shares the member whose name stands first on the register of members as one of the holders of such share or shares and no other shall be entitled to vote in respect of the same.

51. If any member is an infant, pupil, minor, married woman, lunatic, or person of unsound mind he or she may vote by his or her guardian, tutor, husband, committee, or legal curator or by any one of them, if more than one, such person having previously furnished to the directors such evidence as they shall require of his title to represent such member.

52. No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of four months from the registration of the company unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

53. Votes may be given either personally or by proxy. No person shall be appointed a proxy who is not a member of the company.

54. The instrument appointing a proxy shall be deposited at the registered office of the company not less than three clear days before the time for holding any meeting at which the person named in such instrument proposes to vote. Proxies may either be for one meeting or generally for all meetings.

55. The instrument appointing a proxy shall be signed by the party making such appointment and be in the following form, with such variation as circumstances may require:

"The Oregonian Railway Company, Limited.

"I, —— ——, of ——, in the county of ——, being a member of the Oregonian Railway Company, Limited, hereby appoint —— —— as my proxy to vote for me and on my behalf at (the or all ordinary or extraordinary, as the case may be) general meeting (or meetings, as the case may be) of the company to be held on
167 the — day of —— and at any adjournment thereof (or to be held at any time hereafter, as the case may be).

"As witness my hand this — day of ——, 18—.

"—— ——."

Directors and adoption of agreements.

56. Every member holding not less than two hundred shares of the company upon which all calls for the time being shall have been paid shall be eligible as a director.

57. The number of directors shall not be less than three or more than six, but this clause shall be construed as being only directory,

and the continuing directors may act, notwithstanding any number of vacancies.

58. The first directors shall be the Right Hon'ble the Earl of Airlie, K. T., Cortachy Castle, near Kirriemuir; William Lowson, Esq., of Balthayock, merchant, Dundee; Thomas Hunter Cox, Esq., of Duncarse and Maulesden, merchant, Dundee; John Leng, Esq., of Kimbrae, Newport, Fife, and Peter Moir Cochrane, merchant, Dundee, who shall act until the annual ordinary meeting in the year of 1881.

59. The remuneration of the directors shall for each of the first four years after the registration of the company be equal to three-fourths per cent. on the capital of the company, and thereafter shall be such sum per annum as the members may vote at the first annual meeting after the expiration of the said four years. The said remuneration shall be divided between the directors in such proportions as they may determine: Provided always, that the members may at any ordinary meeting resolve that the sum then fixed by them for the remuneration of the directors shall thenceforth be annually appropriated for such remuneration until otherwise altered by a subsequent resolution of the members at some ordinary meeting, and so on from time to time.

60. If any director shall be called upon to perform extra services or to make exertions in going or residing abroad on the company's business, the board may arrange with such director for such special remuneration for such services or exertions either by way of salary, commission, or the payment of a lump sum of money, as they shall think fit.

61. An agreement has been entered into by or on behalf of the directors for the acquisition of the Dayton, Sheridan and Grand Ronde railway, and a contract has been made by or on behalf of the directors for the construction of 60 miles of new railway. The dates and names of the parties to said contracts or agreements are as follows: (1) Agreement (for the acquisition aforesaid) between William Lowson, Esq., of Balthayock, merchant in Dundee, in the county of Forfar, in Scotland, and Peter Moir Cochrane, merchant in Dundee, in said county, for themselves and for all other parties who they may have admitted or may admit into the premises, of the first part, and the Oregon Railway Company, Limited (of Oregon), of the second part, dated 4th March and 1st April, 1880; and (2) contract (for the construction aforesaid) constituted as follows: (*a*) letter or offer by James B. Montgomery for J. B. Montgomery & Co., contractors, Portland, Oregon, dated March 6, 1880, and addressed to the Right Hon'ble the Earl of Airlie, K. T., and Messrs. William Lowson, Thomas H. Cox, John Leng, and P. M. Cochrane, and (*b*) minute of meeting of the provisional committee of the "Oregon Railroad Company, Limited," meaning by that the proposed company, at which meeting were present the said Thomas H. Cox, John Leng, P. M. Cochrane, and William Lowson, and also the said James B. Montgomery, who signed the said minute, dated 8th
168 March, 1880. It is hereby provided that the said contracts or agreements are adopted and shall be adopted and carried

out by the company. Further, and as the said agreement for the acquisition aforesaid was negotiated by the said William Lowson, Thomas Hunter Cox, John Leng, and Peter Moir Cochrane at their own risk, and they have also incurred considerable personal trouble and responsibility, and as the bargain is considered highly advantageous, it is hereby provided that if within four years from the date of registration of the company it shall be found that the said purchased railway does not cost the company for original purchase price and improvement and equipment more than two-thirds the rate per mile of the portion of railway contracted to be constructed, and if on the average over the said period there shall have been earned by the company net profits equal to not less than 10 per cent. per annum, the said above-named parties shall receive twenty-five per cent. of the gain to the company from the said purchase.

Powers of directors.

62. The business of the company shall be managed by the directors.

63. Subject to the restrictions herein contained, and in addition to all other powers herein contained, the directors shall have power to do the following things in the name and on behalf of the company:

[*a*] To carry out and to carry into effect, with all the powers of the company itself, all or any of the objects and powers of the company as expressed in the memorandum of association, as also and without prejudice to said generality.

[*b*] To raise or defend any action, petition, or other legal proceedings, and to abandon, compromise, and settle the same, when and upon such terms as they may deem expedient.

[*c*] To purchase, or acquire, or feu, or lease, any property and effects, whether heritable or movable, real or personal, which they may deem requisite for the purposes of the company, and that either absolutely or perpetually or for any term of years and upon such terms and subject to such ground rents, feu duties, rents, or other charges as they may deem expedient, and also to acquire the right of use of any such property and effects, heritable or movable, real or personal, as aforesaid.

[*d*] To erect any houses or buildings, or alter, renew, repair, or improve any houses or buildings, whether erected by the company or not, as they may think desirable or proper for the advantage of the company.

[*e*] To purchase or acquire the good will and personal property of any kind whatsoever and the credits and effects of any other person or persons or company carrying on a like business, or to amalgamate with this company any such person or company upon such terms and conditions as they may think fit.

[*f*] To sell, feu, exchange, sub-let, or otherwise dispose of the company's property, whether heritable or movable, real or personal, or any part thereof, upon any terms they may think fit.

[g] To insure against risk by fire or other risk any building or property of the company.

[h] To execute and sign and issue in the name of the company all deeds of security and other deeds, and all receipts and other documents and writings they may think necessary, and for that purpose to use the company's seal.

169 [i] To engage all superintendents, secretaries, treasurers, accountants, solicitors, managers, agents, correspondents, clerks, and servants of the company, and also to discharge the same.

[j] To refer disputes to arbitration, and to compromise any debt or claim due to or by the company.

[k] To give time to any debtor for the payment of his debt.

[l] To take the heritable or movable, real or personal, property of any debtor or his equitable interest in any property as a security for the payment or in satisfaction or part satisfaction of any debt due by him to the company.

[m] To draw, accept, make, renew, and endorse any bill of exchange or promissory note that may be deemed necessary for the purposes or the business of the company.

[n] To enter into any contracts with such persons as they shall think fit, whether such persons shall be members or directors or the partners or partner of a member or director of the company or not; and every member or director with whom any such contract may be entered into shall be entitled to the profit and benefit thereof to the same extent as though he were not a member or director of the company.

[o] To accept any conveyance or lease of any property or buildings from any person or persons, whether such person or persons shall be a member or members, or director or directors, or other officers of the company or his or their partner or partners, and such person shall be entitled to the profit and benefit thereof to the same extent as though he were not a member, director, or officer of the company.

[p] To open a banking account in the name of the company; and every sum paid on behalf of the company which shall amount to the sum of £20 and upwards shall be paid by cheque on the bankers of the company, such cheque to be signed by any two directors.

[q] To provide a common seal, to be kept by such person and in such manner as the directors may think fit.

64. The directors may also establish offices, agencies, or local boards in any of the States or countries in which by the memorandum of association they are entitled to do or hold anything, and may make such regulations for the management of such offices, agencies, or local boards as they may from time to time think proper, and for that purpose they may appoint local boards, consisting of such persons and possessing such powers and holding such qualifications as the directors shall from time to time determine; and, farther, the directors may appoint in the United Kingdom, as well

as in any of the said States and countries, managers, agents, secretaries, treasurers, officers, clerks, and servants, with such remuneration and at such salaries as they may consider advisable, and may pay the expenses occasioned thereby out of the funds of the company, and may from time to time discontinue all or any branch offices, agencies, or local boards, and may remove or suspend at any moment all or any of the members of any local board and all or any of the managers, agents, secretaries, treasurers, officers, clerks, or servants of the company for such reasons as they may think proper and advisable and without assigning any cause.

65. The directors may from time to time appoint a president of the company and also a vice-president, who, in the absence of the president, may act in the president's name and place as president of the company. All deeds, powers of attorney, instruments, and other documents requiring, according to the law of any State, country, province, or dominion, to be subscribed or executed on behalf of the company by the president of the company alone or in conjunction with the secretary of the company may be so subscribed and executed on behalf of and so as to bind the company by the president or vice-president appointed as aforesaid, and by the secretary of the company where his subscription is also necessary.

66. The directors shall have the power to make temporary investment of the company's funds in the United Kingdom or in any colony of her majesty or in any foreign State or country, and that in such way or upon such stocks, shares, bonds, debentures, or securities as they may from time to time approve, and they may from time to time realize such temporary investments and invest of new in whole or in part.

67. The directors may from time to time borrow, for the purposes of the company, such sum or sums of money as they may from time to time think proper, and they — make *an* issue for any money borrowed such bonds, deeds of security, and other deeds, vouchers, documents, shares, acts, matters, and things as are authorized by the memorandum of association of the company and as they from time to time consider proper.

68. Money may be borrowed for the purposes of the company with a stipulation, if approved by a general meeting, that the security may be converted into preference or other shares or stock of the company.

69. In the event of any moneys being borrowed for the purpose of the company on the terms of the securities for such moneys being convertible into shares, the directors may create and issue such new shares, either preferential, ordinary, or deferred, as may be necessary for carrying such conversion into effect.

70. The directors shall have power, by the signature of the managing director or secretary, with the counter-signature of one of their number, to draw, accept, make, or endorse bills of exchange, drafts, promissory notes, and cheques, and to grant receipts for money borrowed on behalf and for the purposes of the company; but for the purpose of granting interim receipts for money received to be lent

on mortgage or bond of the company, and of authenticating notices or reports, allotment letters, coupons, or interest or dividend warrants the signature of the managing director or secretary alone shall be sufficient on his being from time to time authorized by the directors accordingly.

71. The directors shall have power to appoint such person as they may think fit, whether a member of their own body or not, to be managing director, and from time to time revoke such appointment. They may delegate to such managing director all or any of the powers hereby made exercisable by the directors, except those relating to shares and borrowing, and any others as to which special provisions inconsistent with such delegation herein contained, and they shall have power to fix the remuneration of such managing director.

72. It shall be lawful for the directors, subject always to the sanction of the company, to arrange terms for the amalgamation of the company with any other company, or the amalgamation of any other company with the company, or for the disposal of the business, estate, and effects of the company or any part thereof respectively to any other company, or for the sale or transference of the business, estate, and effects of any other company or any part thereof respectively to the company, and in any such case upon such terms and in such manner as the directors shall think fit; and the directors shall have power to do all such things as may be necessary for carrying such amalgamation, sale, purchase, or other disposition into
171 effect so far as a resolution or special resolution of the company is not by law necessary for such purpose; and in case any terms so arranged by the directors include or make necessary the dissolution of the company, the company shall thereupon be dissolved.

73. The directors may on behalf of the company enter into arrangements with the liquidators of any company authorized to make such arrangements as are contemplated by the 161st section of "the companies act, 1862," and they may apply any shares in the capital of the company for the time being unissued for the purpose of carrying out such arrangements.

74. The company shall have power to use official common seals under "the companies seals act, 1864," in such foreign or other countries as the directors shall determine, and the directors shall have power to appoint any agent or agents, committees or committee, abroad to be duly authorized agents of the company for the purpose of affixing or using such foreign common seals, and they may impose such restrictions on the use thereof as they shall think fit.

75. The company's funds shall not be used in purchasing its own shares.

76. In no case nor under any circumstances shall personal liability attach to any director for anything done or omitted to be done by him in good faith, although loss arise; further, no transaction actually made or entered into on behalf of the company by the directors shall be invalidated or in any way prejudiced by reason of any breach of the regulations imposed by the preceding articles.

Borrowing power.

77. It shall be the duty of the directors to regulate the borrowing of money by the company in such manner that the total amount borrowed shall never exceed a sum equal to one thousand pounds per mile of railway belonging to or in course of construction by the company for the time being, provided that every person taking from the company or by assignment any bond, or debenture, or mortgage, or other obligation or security of the company shall be entitled to assume without inquiry that no such excess has taken place; and provided, further, that no *bona fide* holder of any obligation or security shall be prejudiced by any such excess which may have taken place.

78. Every deed of security issued by the company for securing money borrowed shall be under the common seal of the company, duly stamped. The respective holders of or other persons entitled to such deeds shall proportionably, according to the amount of money secured thereby or contained therein, be entitled to be paid out of the property and assets of the company, including any unpaid capital for the time, the respective sums in such deeds of security mentioned and the interest thereof without any preference or priority one above another by reason of priority of date of any such deeds of security or otherwise howsoever, providing and declaring also that the capital of the company shall not be called, except for the payment of money borrowed, to a greater extent than £6 a share.

79. A register of deeds of security and transfers thereof shall be made and kept by the company at its registered office, in which shall be entered the number and date of every such deed, and the date of every transfer, and the sums secured, and all other necessary particulars for giving full information with respect to such deeds of security and transfers. Such register may be perused free of charge at all reasonable times by any of the holders of the bonds or debentures or securities whatsoever of the company.

172 80. No transfer of a deed of security shall be valid against the company unless and until it be registered in the said register of deeds of security and transfers thereof.

81. Without prejudice to what is otherwise contained in these articles or in the memorandum of association, it is hereby provided that the respective lenders to the company or any of them may also, either in the principal deeds of security or separately or otherwise, receive mortgages or other securities, or bonds, certificates, or obligations creating interests in mortgages or other securities, of or upon all or any railway or railroad and its plant, rolling stock, rates, and revenues, or any of them, belonging to or vested in the company, and that in such form and transferable in such a way as may, according to the law of the State in which the premises so to be mortgaged or charged are situated, be competent; and, further, and without prejudice as aforesaid, the directors shall have power to grant, execute, and deliver, in name and on behalf of and for the company all proper or necessary deeds of trust or mortgage or other deeds or certificates whatsoever of or in the premises, and to do and act in all other respects with all the powers of the company.

Disqualification of directors.

82. The office of director shall be vacated—

(1.) If he ceases to hold the due qualification.

(2.) If he holds any office or place of profit under the company other than that of managing director.

(3) If he becomes of unsound mind or bankrupt, or compounds with his creditors, or is convicted of any crime.

83. All acts done by any meeting of directors, or of a committee of directors, or by any persons acting as a director, or as chairman or deputy chairman of directors, or as chairman of any meeting of directors, or of any committee of directors shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Rotation of directors.

84. At the ordinary meeting to be held in the year 1881 and at the ordinary meeting in every subsequent year one-third of the directors for the time being, or the nearest number to one-third, shall retire from office.

85. The directors to retire in any year shall be those who have been longest in office, and in case of equality in that respect shall, unless the directors agree amongst themselves, be determined by lot.

86. A retiring director shall be re-eligible.

87. The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing a like number of persons, unless it be necessary to elect more or fewer in order to give effect to a resolution for altering the number of directors.

88. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at any such adjourned meeting the places of the vacating directors are not filled up the vacating directors, or such of them as have not had their places filled
173 up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

89. The company may from time to time, in general meeting, increase or reduce the number of directors and alter the qualification of directors.

90. Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

Proceedings of directors.

91. The directors may meet together for the dispatch of business,

adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business by the board of committees. Until otherwise fixed, the quorum for a board meeting shall be two directors.

92. All meetings of directors shall be held in the United Kingdom of Great Britain and Ireland.

93. Questions arising at any meeting of directors shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote.

94. A director may at any time summon a meeting of the directors.

95. The directors may elect one of the directors as chairman of the directors and determine the period for which he is to hold office, and may also, if they think fit, choose another director to act as deputy chairman for the same period. If no such chairman or deputy chairman be elected, or if at any meeting the chairman or deputy chairman be not present at the time appointed for holding the same, the directors present shall choose one of their number to be chairman of such meeting. Any chairman or deputy chairman elected as aforesaid shall cease to hold office on becoming disqualified as a director.

96. The directors may delegate any of their powers to committees consisting of such members of their body as they think fit. Any committee so formed shall, in the exercise of the powers so delegated, conform to any regulations that may be imposed on them by the directors.

97. A committee may elect a chairman of their meetings. If no such chairman be elected, or if he is not present at the time appointed for holding the same, the members present shall choose one of their number present to be chairman of such meeting.

98. A committee may adjourn as they think proper. Questions at any meeting shall be determined by a majority of votes of the members present, and in case of an equal division of votes the chairman shall have a casting vote.

99. The directors shall cause minutes to be made in books provided for the purpose—

1st. Of all appointments of officers made by the directors; and

2d. Of all orders made by the directors or by committees of directors; and

3d. Of all resolutions and proceedings of the directors and committees of directors.

And any such minute as aforesaid, if signed by any per-
174 son purporting to be the chairman of the meeting to which it relates, or of the next meeting of the directors, or of the same committee, shall be receivable in evidence without any further proof.

Dividends or bonuses and reserve fund, and general provisions.

100. The directors may, with the sanction of the company in general meeting, from time to time declare a dividend or bonus to the

members in proportion to their shares, but no dividend or bonus shall be made except out of nett profits, as shown upon the balance-sheet, which shall from time to time have been examined and passed by the auditor, but it may be either in cash or shares, or partly both.

101. The directors may at any time in any year pay such sum or sums as they think fit on account or in anticipation of dividend or by way of interim dividend.

102. It shall be the powers of the directors, before recommending any dividend or bonus, to set aside out of the profits of the company such sums as they think proper as a reserve fund to meet contingencies, provide against losses, or for equalizing dividends, or to cover depreciation or diminution in value of any property which shall from time to time be acquired by the company, or for any other purpose of the company sanctioned by the company, and the directors may invest the sum so set apart as a reserve fund upon such securities as they may from time to time approve.

103. In any case where the board may think fit, purchases or investments of any kind —, and when the general or reserve funds or otherwise may be made and conveyances or securities taken and held in the names of the trustees to be named by the directors.

104. No member shall be entitled to receive payment of any dividend or bonus in respect of a share or shares whilst any moneys may be due or owing from him to the company in respect of such share or shares, and any dividend or bonus which but for this provision might be payable to him may be set off by the company against the debt owing to the company from such member.

105. Every dividend or bonus payable in respect of any share held by several persons jointly may be paid to and an effectual receipt given by any of such persons.

106. All dividends and bonuses remaining unclaimed for three years after having been declared may, by a resolution of the directors or of a general meeting, be appropriated to and retained by the company, but the directors may at any time thereafter, if they shall think so fit, as a matter of grace and favor, authorize the payment thereof to any claimant or claimants who shall adduce a title thereto to the satisfaction of the directors.

107. No dividend or bonus shall under any circumstances whatever bear interest against the company.

Dissolution.

108. If the directors shall pass a resolution recommending the company to be dissolved, and a general meeting shall, in pursuance of such recommendation, resolve that the company shall be dissolved and a second general meeting shall confirm that resolution, then the company shall thenceforth subsist and carry on business for the purpose only of winding up its affairs, and its affairs shall be wound up, and it shall be dissolved in accordance with and
175 subject to the provisions of "the companies act, 1862 and 1867," which are and may be applicable to the voluntary

winding up of a company under the same on the occurrence of an event on which it is provided that a company under the same may be wound up voluntarily.

109. Farther, if four or more members qualified in terms of the thirty-sixth article hereof shall request the directors in writing to convene an extraordinary general meeting of the members to consider the propriety and expediency of winding up the company, they shall be bound to do so; and if at such meeting it is resolved that the company shall be dissolved and wound up and a second general meeting shall confirm that resolution, then the course provided in the immediately preceding article shall be followed and carried out.

110. The majority necessary to carry any resolution as set forth in the two immediately preceding articles shall not be less than two-thirds in value of the members present, personally or by proxy, at the aforesaid meetings.

Accounts.

111. The directors shall cause true accounts to be kept of the company's business and transactions and of all sums of money received and expended by the company and the matters in respect of which such receipt and expenditure take place and of the credits and liabilities of the company.

112. A statement of the company's true financial position, made up yearly to such time in each year as the directors may annually determine, shall be laid before the immediately following ordinary general meeting, and which meeting shall receive and consider the same.

Audit.

113. Once at least in every year, namely, preparatory to the annual ordinary general meeting, the accounts of the company shall be examined and the correctness of the annual financial statement ascertained by one or more auditor or auditors to be appointed by the company.

114. The auditor or auditors shall be appointed by the company at the first ordinary meeting of the company, and thereafter at the ordinary general meeting in each year.

115. The auditors need not but may be members of the company, but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company, and no director or other officer of the company is eligible during his continuance in office.

116. The remuneration of the auditors and their term of office shall from time to time be fixed by the company in general meeting, and until otherwise ordered by general meeting there shall be only one auditor, but a firm appointed as auditors shall be reckoned as one auditor.

117. Any auditor shall be re-eligible on quitting his office.

118. If any casual vacancy occurs in the office of auditor, the directors shall supply it.

119. Every auditor shall be supplied with a copy of the annual financial statement, and it shall be his duty to examine the same, with the accounts and vouchers relating thereto.

120. Every auditor shall have access to all the books and accounts kept by the company. He may, at the expense of the company, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the directors or any officer of the company.

121. The auditors shall certify to the members the correctness of the annual financial statement, and they may give such information to the members on the state of the company's affairs as they may think fit.

Notices.

122. A notice — served by the company upon any member either personally or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

123. All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members, and notice so given shall be sufficient notice to all the holders of such share.

124. Any notice if served by post shall be deemed to have been served on the day following that on which the letter containing the same was posted, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

125. Any member residing out of the United Kingdom may name an address within the United Kingdom at which all notices shall be served upon him, and all notices served at such address shall be deemed to be well served. If he shall not have named such an address he shall not be entitled to any notice of any general or other meeting whatsoever, and a notice of any meeting advertised in any Dundee newspaper shall be held sufficient notice to all shareholders, wherever residing, of all such meetings.

126. All notices shall be deemed to have been served upon the holders of stock or stock warrants and upon members residing out of the United Kingdom who have not named an address for service within the United Kingdom if they shall be advertised in one daily newspaper published in Dundee, and all notices required by law to be given by advertisement shall be advertised in the like newspaper. The company shall not be bound to serve notice on the holders of stock or share warrants or on such members in any other manner.

Interpretation clause.

127. In the construction of these articles, unless repugnant to the context, the singular shall include the plural, the masculine, the feminine, and *vice versa*, and the words interpreted by this clause shall bear the meanings next hereinafter assigned to them, viz:

177 Words interpreted.	Meanings assigned thereto.
The company	The company established under the memorandum of association to which these articles are annexed.
Capital	The capital, for the time being, raised or subscribed or authorized to be raised for the purposes of the company.
Shares	The shares or stock into which the capital is divided and interests in the property of the company corresponding with such shares and stock.
Members	Shareholders, for the time being, of the company, whether individuals, firms, or companies.
General meetings	General meetings, whether ordinary or extraordinary, of the members lawfully convened and held in accordance with the regulations, for the time being, of the company.
Persons	Corporations, companies, and firms, as well as individuals.
Directors	The directors, for the time being, of the company.
Secretary	The secretary, for the time being, of the company.
Office of the company	The registered office, for the time being, of the company.
Month	A calendar month.
The register of members	The register of members to be kept pursuant to the statute.

Words interpreted.	Meanings assigned thereto.
Deed of security or deeds of security.	Any bond debenture, mortgage debenture, mortgage, trust deed, promissory note secured by trust deed or mortgage or other deed for borrowed money or any security of the company whatsoever.
Company's regulations	The regulations, for the time being, for the management of the company.

Names, addresses, and description of subscribers.

Airlie, of Cortachy Castle, Kirriemuir, in the county of Forfar.
William Lowson, of Dundee, in the county of Forfar, merchant.
Thomas H. Cox, of Dundee, in the county of Forfar, merchant.
John Leng, of Kimbrae, Newport, in the county of Fife, newspaper proprietor.
P. M. Cochrane, of Dundee, in the county of Forfar, merchant.
Alex. Henderson, of Dundee, in the county of Forfar, merchant.
Alex'r Nicoll, of Dundee, in the county of Forfar, merchant.
James Stevenson, of Dundee, in the county of Forfar, dyer.
John M. Watson, of Dundee, in the county of Forfar, stockbroker.
William Mackenzie, of Dundee, in the county of Forfar, stockbroker.
Dated the 30th day of April, 1880 years.
Witness to the above signatures:

WM. ARTHUR BELL,
Apprentice to Messrs. Pattulo & Thornton,
Solicitors, 1 Bank Street, Dundee.

178 The following is the copy of the certificate of incorporation produced by the said witnesses, Thornton and Ferguson, as testified to by them in their said depositions:

(Copy.)

Companies Acts—1862, 1867, *and* 1877.

No. 963.

Company limited by shares.

Certificate of Incorporation of the Oregonian Railway Company, Limited, under the Companies Acts—1862, 1867, *and* 1877.

I, Stair Agnew, registrar of joint-stock companies, do hereby certify that the Oregonian Railway Company, Limited, is this day incorporated under the companies acts, 1862, 1867, and 1877, and that it is a company limited by shares.

Given under my hand this fourth day of May, eighteen hundred and eighty.

(Signed) STAIR AGNEW,
Registrar of Joint-Stock Companies for Scotland.

179 The following is a copy of the certificate which the witness Thornton produced and testified was the original certificate of incorporation of plaintiff:

Certificate of the Incorporation of a Company.

I hereby certify that the Oregonian Railway Company, Limited, was incorporated under the companies acts, 1862, 1867, and 1877, on the fourth day of May, one thousand eight hundred and eighty.

Given under my hand, at Edinburgh, this fifth day of February, one thousand eight hundred and eighty-five.

[Registrar's Official Seal.]

(Signed) JOHN J. REID,
Registrar of Joint-Stock Companies for Scotland.

[Companies registration stamp, five shillings.]

180 Be it further remembered that it was stipulated by and between the parties to this action, by their respective attorneys, that Mr. C. H. Prescott, a witness subpœnaed by plaintiff on its behalf in this cause, if present would testify under oath—

That he is and was at the dates hereinafter mentioned the manager of the defendant corporation, The Oregon Railway & Navigation Company, and that a certain paper marked "Exhibit A to stipulation" and filed herewith, entitled "Oregon Railway & Navigation Company; manager's office, Portland, Oregon, October 3rd, 1881; circular," purporting to be signed by C. H. Prescott, manager, was signed and issued by him as of that date and was by him, as manager of the defendant, The Oregon Railway & Navigation Company, distributed and circulated amongst the officers and employees of said company for their guidance and direction.

That a pamphlet herewith filed, marked "Exhibit B to stipulation," entitled "Oregon Railway & Navigation Company; third annual report of the president to the stockholders, for the year ending June 30th, 1882," was signed and issued as of that date by Henry Villard, the president of the defendant corporation, and that the printed appendix thereto was signed by J. N. Dolph, vice-president and chairman, and by Theodore Wygant, secretary of defendant, and that said pamphlet, with said appendix thereto, was generally circulated about that time amongst the stockholders of the defendant corporation; and that a pamphlet marked "Exhibit 6 to stipulation" and filed herewith, entitled "Oregon Railway & Navigation Company; fourth annual report of the president to the stockholders, for the year ending June 30th, 1883," was signed and issued as of that date by Henry Villard, president of the defendant corpo-
181 ration, and that the printed appendix thereto was signed by J. N. Dolph, vice-president and chairman, and by Theodore Wygant, secretary, and that said pamphlet and appendix as issued contained the map found in said Exhibit "C" to stipulation, and that said pamphlet, with said appendix thereto and map therein contained, was generally circulated about that time amongst the stockholders of the defendant corporation.

EXHIBIT A TO STIPULATION. Filed May, 1886.

Circular.

Oregon Railway & Navigation Company; manager's office.

PORTLAND, OREGON, *October* 3, 1881.

The railroad and fixtures of the Oregonian Railway Company, Limited, having been turned over to the Oregon Railway & Navigation Company under the lease, J. M. Filmore, superintendent, and officers and employees subordinate to him will retain their present positions until further notice and report to the undersigned.

C. H. PRESCOTT, *Manager.*

182 EXHIBIT B TO STIPULATION.

Oregon Railway and Navigation Company.

Third Annual Report of the President to the Stockholders, for the Year Ending June 30th, 1882.

New York:
Evening Post job printing office, cor. Broadway and Fulton street.
(Law telephone No. 541.)
1882.

182*a* Oregon Railway and Navigation Company.

Third Annual Report of the President to the Stockholders, for the Year Ending June 30th, 1882.

New York:
Evening Post job printing office, cor. Broadway and Fulton street.
(Law telephone No. 541.)
1882.

182*b* *Board of Directors.*

Henry Villard	New York city.
W. H. Starbuck	New York city.
A. H. Holmes	New York city.
Wm. Endicott, Jr.	Boston, Mass.
Geo. M. Pullman	Chicago, Ill.
C. H. Lewis	Portland, Oregon.
Henry Failing	Portland, Oregon.
J. N. Dolph	Portland, Oregon.
W. S. Ladd	Portland, Oregon.
S. G. Reed	Portland, Oregon.
C. H. Prescott	Portland, Oregon.

Officers.

Henry Villard	President.
J. N. Dolph	Vice-president.
C. H. Prescott	Manager.
J. M. Buckley	Assistant manager.
Horace White	Treasurer.
C. J. Smith	Comptroller.
Theodore Wygant	Secretary and assistant treasurer.
T. H. Tyndale	Assistant secretary.
H. Thielsen	Chief engineer.
John Muir	Superintendent of traffic.
Transfer agent	Farmers' Loan & Trust Co., New York.

182*c* To the stockholders of the Oregon Railway and Navigation Company:

There is good occasion for congratulating you upon the general results of the third year of the company's existence. You have every reason to be satisfied with the returns upon your capital already received. You have every assurance that the income from your interest in the company's properties will steadily increase hereafter as in the past. There has been marked progress in every field of the company's operations during the last fiscal year. The whole of the richly favored country tributary to our transportation system has felt the extraordinary stimulus of an unprecedented immigration and a large influx of new capital, both attracted by the approaching completion of the new northern transcontinental rail-

road. There is evidence, indeed, in every direction that, wonderful as our company's development has been during its comparatively short life, our present prosperity is but the opening of an unbroken career of great success.

Financial Record.

For the details of the financial operations of the company reference is here made to the general balance, income account, and general statement of receipts and disbursements appended to this report.

In my last annual report it was set forth that the capital stock of the company had been increased from $6,000,000 to $12,000,000, and that the proceeds of this issue of 60,000 additional shares to stockholders of record at par were being used in carrying out the general programme adopted in 1880 and 1881 for the construction of railroad main lines and branches. In the fall of last year the board of directors decided that it would be for the best interest of the company to push to completion the Columbia River line between Portland and The Dalles and the line between Umatilla and Baker City at the earliest possible moment, and for this purpose to make a further issue of stock in the same manner as the preceding one.

Accordingly you were informed by circular, dated November 21, 1881, as follows:

"That for the purpose of providing the sum of $6,000,000 for the completion of the company's system of roads and for additional equipment therefor the board of directors had decided to call a special meeting of the stockholders for December 20, 1881, and to submit to such meeting a proposition to further increase the capital stock of the company by issuing 60,000 additional shares of stock of the par value of $100."

A full explanation of the reasons for this decision of your board accompanied this circular. The special meeting was held on the day mentioned, and by the unanimous vote of all the stock represented, to wit, nearly 80,000 shares, the resolutions were adopted, the full text of which is printed in the appendix.

By circular of December 23, 1881, you were notified of the adoption of these resolutions and invited to exercise your rights thereunder. The subscription books were opened at the time and in the manner specified in the resolutions, and the entire amount was at once subscribed by those entitled to the privilege. The several installments have been promptly paid at their respective dates.

As shown in the statements of the treasurer, the total receipts and disbursements for the fiscal year have been—

Receipts	$9,703,394 59
Disbursements	11,358,920 65

182*d* This included $4,200,000 from the new stock subscription for a corresponding issue of 42,000 additional shares, increasing the outstanding stock to $16,200,000. Since then the remaining three instalments of ten per cent. each have been paid in, aggre-

gating $1,800,000, and an additional issue of 18,000 shares was made on September 1st.

From the organization of the company to the end of the fiscal year 1880–'81, the total expenditures for new construction and equipment upon the ocean, river, and railroad divisions amounted to		$7,449,484 10
The total expenditures on new construction and equipment account from July 1, 1881, to June 30, 1882, were—		
Railroad division	$5,927,346 86	
Ocean division	30,564 54	
River and Puget Sound divisions	411,741 19	
		6,369,652 59
Since the close of the last fiscal year there has been a further expenditure of		1,945,467 81
Making a grand total of expenditures on construction and equipment account since July 1, 1879, of		$15,764,604 50

Cost of Railroad Lines.

The separate cost of the several railroad lines built and building was as follows on July 1, 1882:

Main Line.

Completed section.

The Dalles to Walla Walla, 157 miles		$3,857,001 96
Average cost per mile	$24,566 89	
The Dalles to the Cascades, 46 miles		2,261,563 87
Average cost per mile	$49,164 43	

Unfinished section.

The Cascades to Portland, 40 miles. Expended prior to July 1, 1882	$869,197 26	
Expended since	250,000 00	
		1,119,197 26
Average cost per mile	$27,979 93	
Total cost of completed main line, 243 miles		$7,237,763 09
Average cost per mile	$29,785 03	
Total cost of Portland-Dalles line, 86 miles		3,380,761 13
Average cost per mile	$39,311 17	

Branches.

Finished lines.

Walla Walla to Texas Ferry, on Snake river, 56 miles		1,592,434 69
Average cost per mile	$28,436 33	
Bolles Junction to Dayton, 14 miles		448,866 72
Average cost per mile	$32,061 90	

Unfinished Line.

Baker City Branch.

Finished portion—Umatilla, on main line, to Pendleton, 44 miles		704,956 12
Average cost per mile	$16,021 73	
Unfinished portion—Pendleton to Baker City, 130 miles, already expended for grading and ties		352,261 00

182*e* The additional new construction in progress is described under the head of "construction and equipment." It is estimated that in order to complete the lines under construction it will yet require $5,000,000 over and above any and all expenditures up to September 15. The available resources of the company will fall short of this requirement, but to what extent cannot be stated at this time, as the amount of the shortage will, in a great measure, depend upon current earnings during the remainder of the year. As soon as the additional requirements shall be more definitely ascertained, your board of directors will advise you of what financial measures will be proposed to meet it.

This further need for construction purposes exceeds the anticipations of the management. It is due mainly to the excess of the cost of The Dalles and Portland section of the main or Columbia River line and of the Baker City Branch over previous estimates. The former includes the line through the Cascade Mountains, the latter the crossing of the range of the Blue Mountains. I have referred to the exceedingly heavy and difficult character of both these lines in another place in this report. Their value to the company will be so great that the increased cost will in the end be of but little moment. This is especially true of The Dalles and Portland line. There is no part of the company's lines that it was wiser and more necessary to construct at the earliest possible moment, and that will yield better and quicker returns. The commanding position of this line is unique. There is no other line like it in the United States, representing, as it does, the western end of the great new transcontinental line and the only practicable outlet to the Pacific Ocean of all the vast regions between California and Nevada on the south, British Columbia on the north, and Idaho on the east.

In considering the total expenditures so far for constructing new railroad it should be borne in mind that the proceeds of the last issue of $6,000,000 of stock, representing nearly the entire construction outlay during the past fiscal year, have not yet become produc-

tive—that is to say, the lines which they have served to create are not yet completed. It is only during the new fiscal year that the fruits of this additional investment of capital will commence to be reaped. The earnings for the past year, as shown in another place, are therefore in reality only the results of the $12,000,000 of capital previously invested.

Construction and Equipment.

Railroad.

In considering the work of construction actually finished during the year, I am compelled to say that less has been accomplished than was expected. In admitting this I do not intend, however, to express any unfavorable criticism upon the construction department. On the contrary, I know that the officers in charge of it have striven with untiring energy to hasten the accomplishment of their respective tasks within the expected time; but they found that in computing the latter they had reckoned without the full knowledge—a knowledge which they could not really be expected to have and which only actual construction could give them—of the great difficulties that they were to encounter on certain portions of the work, and which really rendered it impossible for them to come up to their own expectations and corresponding promises as to time of completion.

I refer especially to the Columbia River line between The Dalles and the city of Portland. It was confidently believed by the engineering department that the portion between The Dalles and the Cascades—a little more than half and the most difficult part of the line—would be finished before the commencement of last winter; but trains only commenced running over it in the month of May. The section between the Cascades and Portland is only just completed.

Mere justice, however, to the construction department requires me to state that this delay was largely due to the transfer last fall
182*f* of the greater portion of our well-organized construction force from the Columbia river to the Pend d'Oreille Division of the Northern Pacific. I thought it my duty to authorize this transfer in view of the vast importance of an early completion of the Northern Pacific main line from Lake Superior to the Pacific Ocean, when I found, during my visit to the ground in October last, that the labor force at the command of that company was entirely inadequate and could not then be increased from other sources owing to the temporary scarcity of Chinese labor. Without this transfer the completion of the Northern Pacific would have been delayed without doubt an entire year. In order to give that company the full benefit of this reinforcement I also consented to let Mr. J. L. Hallett, our superintendent of construction, the great value of whose services I had occasion to mention in my former report, go with our working column. I believed no sacrifice too large if the consummation in question could thereby be hastened.

Grading.

At the end of June, 1881, there had been graded, as stated in my last annual report, 171 miles of the various lines. During the fiscal year the following additional mileage was actually graded:

Main line.

	Miles.
Between Portland and Lower Cascades	30
" Lower Cascades and The Dalles	26
" Walla Walla and Grange City	4
" Umatilla and Baker City	47
" Palouse Junction and Colfax	37
Total	144

At the date of this report the remaining grade on the Portland-Dalles line is completed.

While there is a decrease in the mileage graded in the year 1881–'82 as compared with the preceding year, the relative quantity of the actual work performed in the former is greater, mainly from the extraordinary difficulties of the grading of the entire 86 miles of the Portland-Dalles line, with the exception of the first 12 miles out from Portland, as the engineer-in-chief says in his report:

"The work on these 74 miles is heavier, I believe, than on any other continuous mileage of the same length in the United States. The rock-work alone exceeded four millions cubic yards, while the embankments, principally composed of rock, exceeded five millions cubic yards.

"It will no doubt be surprising, even to engineers, that such immense masses could be moved in so short a time. The solution lies in the peculiar composition and nature of the rock. The rocky cliffs projecting into the river rise vertically from one to five hundred feet out of the water, where the strong current, striking their bases, nearly always deepens the river very much. The rock is almost entirely basaltic and splits vertically with considerable ease under the action of high explosives. By drifting in at stated distances a little below grade we have thus been able, employing from five to twenty-five tons of powder simultaneously exploded, to detach at times from fifty thousand to one hundred and forty thousand cubic yards by single blasts, the detached rock, generally speaking, without much scattering, but well ground up, sinking close to the standing rock into the adjoining deep river, and thus forming the desired roadway without impeding navigation.

"The bridging (trestle-work) on 56 miles amounts in lineal length to 8½ miles and has consumed nearly 260,000 lineal feet of piling and 9,000,000 feet, B. M., of timber.

"The riprapping of the banks has also been very laborious and costly."

Considering the vast quantities of rock and earth to be moved on the Portland-Dalles line, as above stated, and the usual cost of such work, the line in question, notwithstanding its high absolute

cost, is a relatively cheap one. At the prices generally paid to contractors by leading railroads its cost would have been three times as great.

182*g* Track-laying.

The following track mileage was laid during the past fiscal year:

Main track.

Between Portland and Lower Cascades	9
" Lower Cascades and The Dalles	39
" Walla Walla and Texas Ferry	37
" Bolles Junction and Dayton	13
" Umatilla and Baker City	33
Total main-line track laid	131
" side track laid	14

Bridging.

That the construction work done in 1881–'82, as compared with that of the previous year, is much greater is further evidenced by the relative length of bridging completed in those two years, as shown below:

In 1881–'82:	Lineal feet, length.
Between Portland and The Dalles	45,715
" Walla — and Grange City	4,700
" Bolles Junction and Dayton	1,015
" Umatilla and Pendleton	3,038
Total	54,468
" in 1880–'81	12,732
Excess	41,736

Buildings and other structures.

The following is a list of the structures erected during the past fiscal year:

11 freight and passenger houses.
1 covered freight platform, with numerous small uncovered ones.
1 hotel.
13 water-tanks.
8 windmills.
58 section and mess houses.
50 small houses for various purposes.
5 car-repairing houses.
2 car sheds.
1 telegraph office.
6 turn-tables.
3 engines-houses.
2 blacksmith-shops.
4 stock yards.

Railroad material and equipment.

The following construction material, not yet in track, is on hand and paid for:

	Cost.
15,000 tons steel rails 7,000 " iron " 1,760 " fastenings	$1,458,200
Iron work, wheels, and axles for 300 cars are also on hand and paid for	103,400

The following equipment was provided during the past year:

25 locomotives.
3 passenger cars.
6 baggage and express cars.
12 caboose cars.
1 wrecking car.
1 pile-driver car.
518 freight cars.

182*h* Making a total equipment on hand of—

55 locomotives.
22 passenger cars.
4 Pullman sleeping cars.
8 baggage and express cars.
12 caboose cars.
1 wrecking car.
1 pile-driver car.
1,272 freight cars.

Summary of railroad construction work.

At the formation of the company, in 1879, it acquired the following mileage:

	Miles.
Portage railroad at the Cascades (standard gauge)	6
Portage railroad from Celilo to The Dalles (standard gauge)	13
From Wallula to Walla Walla (narrow gauge)	33
" Whitman to Weston (narrow gauge)	15
Total	67

There were finished in 1879–'80 of new standard-gauge road 5 miles, and 84 miles were graded:

	Miles.
In 1880–'81 there were completed of standard-gauge road	139
Changed from narrow to standard gauge from Wallula to Walla Walla	33
Making a total completed mileage at the end of the fiscal year 1880–'81 of	172

In addition 87 miles were graded during that year.

At the close of the fiscal year 1881–'82 there were 337 miles of road completed and in operation, with 65 miles additional far advanced toward completion. With the opening of the Portland-Bonneville section of the main line between Portland and Walla Walla, which has just taken place, the company's railway property will represent a total of 377 miles of completed track.

The following additional mileage is under construction:

Pendleton to Baker City	130 miles.
Walla Walla to Pendleton	46 "

The following lines are projected:

Pataha Branch	37 miles.
Lewiston Branch	30 "

Other construction.

The river and ocean steamers of the company have been kept in thorough repair and their equipment maintained at a high standard. Wharves and wharf-boats have been provided where needed at various points on the rivers. The construction of a dry dock at Portland for repairs of the company's vessels and general commercial purposes is nearly completed, and a dry dock and ways have been constructed at Texas Ferry, on the Snake river, for repairs to river boats.

Terminal Construction.

In my last report I referred to the project then existing of erecting the terminal station of our main line, together with the necessary storing and shipping facilities, upon the real estate acquired for the purpose by the company in the southern part of Portland. The identity of controlling ownership of this company and the Northern Pacific Railroad Company, which was established through my 182*i* agency just before the close of the previous fiscal year, rendered it desirable and necessary that the two companies should have joint terminal arrangements. Upon careful examination of the ground by the company's engineers it was found that it was physically impossible to make close connection between our main line and the Puget Sound line of the Northern Pacific, entering the city from the north, in South Portland. Your management was therefore compelled to seek a location for a connection elsewhere. The value of real estate in Portland has risen so rapidly during the past two years that the purchase of the South Portland tract will yet prove a very profitable transaction, notwithstanding the abandonment of the project in pursuance of which it was bought.

The new problem thus forced upon the management was a most complicated one, owing to the peculiar characteristics of the site of the city. After mature study of the ground on both banks of the Willamette a practicable plan, fully meeting all present and future terminal requirements, was formed by the engineering department and approved by the management; but its execution proved no less

difficult than its conception, owing to the necessity of acquiring property from a large number of individual owners and of occupying public streets, and to other causes. I take pleasure in announcing, however, that all the obstacles encountered have been removed, and that the project is being carried out. The plan is to build a large union passenger depot in the north part of Portland, close to the heart of the city, with an adjoining freight depot, both for the joint use of all the railway lines centering there. The passenger depot will occupy a little over 18 acres and the freight depot will cover about 30 acres, with an available length for tracks of over 2,200 feet, and with the same length of river front, owned partly by the Oregon Railway and Navigation Company and partly by the Oregon and California Railroad Company.

To reach these grounds the Oregon Railway and Navigation Company's lines, entering East Portland from the east, will connect with the Oregon and California Company's East Side road, entering from the south, upon the latter's present depot grounds, on the east bank of the Willamette; thence both roads will cross the river on a double-tracked bridge and enter the union depot from the north. The Northern Pacific railroad from Puget Sound, coming into Portland from the north, will enter the depot from the same direction as the two former lines. The Oregon and California Company's West Side road enters the city from the south and will run directly to the union depot.

Another part of the project is to erect workshops for all the companies upon a tract of 246 acres, which has been secured on the east bank of the Willamette. These grounds will also be used as a place for making up trains, and upon the river front is located the dry dock, now in process of construction. Coal bunkers, a wheat elevator, and a warehouse for direct ocean business will also be built here. A wharf is now being erected between the dry dock and the site of the bridge, and the necessary filling in of the low ground adjoining is progressing rapidly.

Progress of Allied Roads.

During the past year the Northern Pacific railroad has been pushed forward towards completion with all practicable expedition. The ends of track were advanced from the east 183 miles and from the west 102 miles, making a total of 285 miles built from June 30th, 1881, to June 30th, 1882. At the latter date 572 miles remained to be built. This will probably be lessened 300 miles by the close of 1882, leaving only 272 miles of track to be laid after January 1st, 1883. The grading and other heavy work is so far advanced in the gap yet to be closed that the final connection of tracks will no doubt be made during the working season of 1883.

The Oregon and California Railroad Company, another allied corporation, is actively engaged in extending its main line
182*j* from Roseburg, 200 miles south of Portland, to the boundary between Oregon and California, just south of the Siskyou Mountains, a distance of about 175 miles, where it will form a junc-

tion with the Oregon Branch of the Central Pacific railroad, now building northward from its present terminus at Redding, thus opening unbroken rail communication between Portland and San Francisco. About 40 miles of track have already been laid south of Roseburg. The serious obstacles to construction in the form of high and steep mountain spurs and ranges are being overcome by skillful engineering in grades and tunnels.

Traffic.

The mileage operated at the close of the last fiscal year, June 30, 1882, was as follows:

	Miles.
Ocean line.	
Between San Francisco and Portland	670
Puget Sound lines.	
Between Tacoma, Olympia, Seattle, Victoria, and other Sound points	238
River lines.	
On the Willamette river, between Portland and Eugene	172
On the Willamette and Columbia rivers, between Portland and Astoria	98
On the Willamette and Columbia rivers, between Portland and the Lower Cascades	63
On the Columbia river, between the Upper Cascades and The Dalles	51
On the Columbia river, between Celilo and Priest's Rapids	205
On the Snake river, between Texas Ferry and Lewiston	78
Total	667
Railroad lines.	
Main line.	
Bonneville (Lower Cascades) to Walla Walla	203
Branch lines.	
Walla Walla to Texas Ferry	56
Bolles Junction to Dayton	14
Whitman to Blue Mountain	14
Umatilla to Pendleton	44
Portage Road, Lower Cascades	6

Leased lines.

Oregonian Railway Company (Limited), in Willamette Valley:		
East Side road, 90; West Side, 60	150	
Total		487
Grand total mileage		2,062

Changes in ocean and river traffic.

On account of the heavy increase in the passenger and freight traffic between San Francisco and Portland, the company's steamships have been leaving each terminus at intervals of four days instead of five, as during the previous year.

The employment of our Columbia and Snake river steamboats has materially changed, owing to the additional railway mileage constructed along those rivers. The business on the Middle Columbia is now chiefly performed by rail instead of by boats. The steamboats R. R. Thompson and Mountain Queen, formerly employed on that portion of the river, together with the barge Atlas and a large wharf-boat, were successfully brought down over the Cascades and are now in service on the lower river. I deem it my duty to make special mention of this remarkable feat of the officers in charge of these craft. A single steamboat is kept in service between the Upper Cascades and The Dalles for mail, passenger, and freight business on the Washington Territory side and for tourists' travel, with a second boat in reserve for an emergency.

182½

The railroad was completed to Texas Ferry, on Snake river, December 4, 1881, and the steamboats previously running between Celilo and Lewiston now make their lower terminus at Texas Ferry.

A steamboat has been put into service between Celilo and Priest's Rapids on the upper Columbia. With the settlement of the agricultural and grazing regions in the Great Bend of the Columbia the traffic on this route will become of considerable importance.

Increased traffic and earnings.

I refer you with particular satisfaction to the subjoined figures, embracing the annual results of traffic operations. It is safe to say that no other transportation company in the country can show such a favorable exhibit:

	1881–'82.	1880–'81.	Increase.
Total number passengers transported on ocean, railroad, and river divisions	274,318	167,787	106,531
Total tonnage of freight	1,139,248	623,025	516,223
Percentage of increase in passenger traffic	63.5		
Percentage of increase in freight traffic	82.8		

The earnings of all the company's divisions show a very marked and gratifying increase. It will be seen by the following condensed statement that the increase of the net earnings over those of the previous year was 40.8 per cent., and this in face of the fact that our railway lines have been extended far into new territory, which has only just begun to feel the stimulus of rail communication.

Comparative Earnings of All Divisions.

Gross earnings.	Year ending June 30, 1882.	Year ending June 30, 1881.	Increase.
Passenger	$1,084,567 85	$755,739 01	$328,828 84
Freight	3,675,174 82	2,781,349 80	893,825 02
Mail and express	96,932 55	49,908 81	47,023 74
			Decrease.
Miscellaneous	91,304 84	143,247 98	51,493 14
Total	$4,947,980 06	$3,730,245 60	$1,217,734 46

Increase per cent. in gross earnings, 32.6.

Total gross earnings, 1881–'2	$4,947,980 06
" operating expenses	2,544,866 43
Net earnings	$2,403,113 63
" " for 1880–'1	1,706,428 83
Increase	$696,684 80

Increase per cent. in net earnings, 40.8.

	Per cent.
Ratio of expenses to earnings, 1880–'1	54.3
" " " 1881–'2	51.4
Decrease	2.9

For further details of traffic operations reference is made to the statements in the appendix.

1821 *Navigation of the Columbia River.*

From its important bearing upon our navigation interests I deem it proper to refer in this place to the recent signal success which has attended the efforts of the officers of the company to cut a deep channel through the bar in the Columbia river at St. Helens. By the skillful use of the screw propeller of the steamship Walla Walla, without any dredging apparatus, the sand on the bar was displaced

and carried away by the current to such an extent that in four days' time a channel was opened 1,000 feet long, 100 feet wide, and 22 feet deep. The same method will be applied to other bars in the Columbia and the Willamette, and, it is believed, with equal success. The importance of this achievement may be estimated from the fact that, as a rule, all sea-going vessels starting from Portland, including our steamships, have to lighter a part of their cargo down the Columbia during the season of low water, which occurs in the fall, the busiest part of the year. This involves considerable expense and loss of time, and is a most serious impediment to the growth of the commerce of the Columbia.

Development of Tributary Territory.

The regions tributary to the company's transportation lines exhibit a steady and substantial growth in population and industrial enterprise. The increase in the population of the State of Oregon and the Territory of Washington is remarkable, in view of the much greater cost in money, time, and hardship the emigrant must incur to reach those distant regions than is involved in going to the States and Territories of the nearer West, east of the Rocky Mountains.

The number of passengers carried from San Francisco to Portland, Oregon, and Puget Sound ports on the steamers of the Oregon Railway and Navigation and Pacific Coast Steamship Companies from July 1st, 1881, to July 1st, 1882, was 36,899; the number for the corresponding period of the preceding year was 20,235.

The number of passengers carried from the same ports to San Francisco during the same years were, respectively, in 1880–'81, 13,596, and in 1881–'82, 18,590, showing an increase of inward over outward travel of 24,948 in the two years named.

Adding to this difference the estimated number of immigrants entering Oregon and Washington Territory overland, to wit, 7,000, we have an absolute increase in population of 31,948. These figures speak strongly of the attractions for settlement of the Pacific Northwest, and foreshadow a greatly increased immigration to follow upon the completion of the direct transcontinental line of the Northern Pacific railroad next year.

The city of Portland, the centre of our whole system of ocean, river, and rail transportation, has increased its population since the census of 1880 by nearly sixty per cent. The export trade of the city for the year 1881, coastwise and foreign, reached an aggregate of $15,970,148, of which wheat furnished $6,679,418; flour, $2,853,792; canned salmon, $2,484,761, and wool, $1,488,360. The number of departures of ocean steamships increased thirty per cent.; of sailing vessels, 214 cleared, of which 163 were laden with wheat for European ports.

The Puget Sound towns have also made substantial progress under the stimulus of an active trade in lumber and of the development of the rich and extensive coal-field lying between the sound and the base of the Cascade Range. It is estimated that the population of

Seattle has increased fifty per cent. in two years, and that of Tacoma shows an almost equal gain.

East of the Cascades, in Oregon and Washington, the development of the exceedingly fertile country drained by the company's lines has progressed rapidly. A large movement of settlers took place this season to the country on both sides of the Snake river and the more remote region in the Great Bend of the Columbia. This new settlement will show its effect next year in producing a further increase in the wheat surplus and in our general traffic re-
182*m* turns. The high rolling plateau extending south and east along the bases of the Cœur d'Alène and Blue Mountains for a distance of nearly three hundred miles, with a breadth of 50 to 100 miles, is admirably adapted to the production of all the small grains and to stock-raising. It is destined to support a large population. All the towns in this favored region, including Walla Walla, Umatilla, Dayton, Pataha, Pomeroy, Colfax, Moscow, Farmington, and Lewiston, show in their recent growth the influence of the increasing numbers and prosperity of the rural population around them.

South of the Blue Mountains, in Oregon, the company's Baker City Branch will stimulate the settlement of the Grande Ronde, Powder river, and other fertile valleys, and develop new sources of traffic. It is believed that the valleys of Willow creek and John Day river, now steadily filling up with farmers and herdsmen, will soon invite the construction of new branch lines.

The recent growth of the Territory of Idaho and its prospects for future development are matters of considerable interest to this company. The northern agricultural counties soon to be reached by the extension of the Oregon Railway and Navigation Company's lines to Lewiston possess a rich soil similar to that of Eastern Washington and are fast filling up with a stable farming population. They are destined to furnish a large traffic to our roads. In Southern Idaho, lying southeast of our line now building to Baker City, there has been a notable development of mining industry of late. The output of the mines of precious metals amounted last year to over $4,000,000. Owing to remoteness from rail transportation, only the high-grade ores are now worked. A large expansion of this industry may be looked for as soon as it becomes profitable to work the low-grade ores. The present population of the Territory is 46,000, having increased 14,000 in the past year. Boisé City, the capital, is the centre of a fine agricultural section and the principal distributing point for the mining districts.

It affords me pleasure to bear testimony to the intelligence and faithfulness with which the officers and employees of the company have discharged their respective duties during the current year.

Your attention is invited to a report of the annual meeting of stockholders, printed herewith.

Respectfully submitted, H. VILLARD, *President.*

New York, October 1, 1882.

182*n* APPENDIX.

182*o* I.

Income Account, Year Ending June 30, 1882.

From gross earnings:		
Ocean division	$998,539 70	
River "	2,072,956 73	
Railroad "	1,673,740 93	
Narrow-Gauge division	58,144 74	
Puget Sound "	144,597 96	
		$4,947,980 06
" profit on sale of steel rails and locomotives		17,169 16
" miscellaneous interest and premiums		34,361 44
" operation of Walla Walla & Columbia River railroad	$129,602 52	
Less taxes	408 41	
		129,194 11
Total		$5,128,704 77

CONTRA CREDIT.

For operating expenses:		
Ocean division	$605,103 83	
River "	1,134,568 90	
Railroad "	643,061 13	
Narrow-Gauge division	60,244 21	
Puget Sound "	101,888 36	
		$2,544,866 43
" taxes		67,674 57
" interest:		
12 months' interest, at 6%, on $6,000,000 bonds	360,000 00	
12 months' interest, at 8%, on $600,000 scrip certificates	48,000 00	
8 months' interest, at 8%, on $600,000 scrip certificates	32,000 00	
Bank interest, &c.	4,743 12	
		444,743 12
Dividends		1,296,000 00
Legal expense		13,600 96
Rent of Oregonian Railway (Limited)		112,760 40
Total		$4,479,645 48

Surplus for the year	649,059 29
Surplus June 30, 1881	1,034,117 36
Total	1,683,176 65
Scrip representing amount expended in new construction	300,000 00
Surplus	$1,383,176 65

II.

Receipts and Disbursements.

Receipts:

As per income account		$5,128,704 77
From subscriptions to capital stock:		
Balance of 2d $3,000,000 of new stock	$187,620 00	
Assessments of 70% on 2d $6,000,000 of new stock	4,200,000 00	
From payments on last 30% of same	182,069 82	
		4,569,689 82
Sale of property:		
Office safes	2,000 00	
Machinery of steamer "McMinnville"	3,000 00	
		5,000 00
Total		$9,703,394 59

Disbursements:

As per income account		$4,479,645 48
For sinking fund		60,000 00
" purchase of property of Puget Sound Steam Navigation Co.		200,000 00
" new construction:		
Operated lines	156,505 21	
Railroad	5,185,827 75	
		5,342,332 96
" new equipment:		
General	60,235 98	
Railroad	741,346 86	
		801,582 84
" real estate		275,559 37
" purchase of bonds of Willamette Transportation & Locks Co.		200,000 00
Total		$11,358,920 65

III.—*Comparative Statement of Traffic, Gross Earnings, Operating Expenses, Net Earnings, and Percentages.*

Earnings.	Ocean division.	River division.	Railroad division.	Puget Sound division.	Total.
From passengers	$364,097 53	$354 358 50	$286,988 42	79,123 40	1,084,567 85
" freight	615,375 04	1,614,296 93	1,417,956 86	27,545 99	3,675,174 82
" mail and express	30,298 00	20,145 76	9,068 33	37,420 37	96,932 55
" pool and miscellaneous	Loss, 11,230 96	84,155 54	*17,872 06	508 20	91,304 84
Total earnings, 1882	998,539 70	2,072,956 73	1,731,885 67	144,597 96	4,947,980 06
" " 1881	911,829 01	2,268,208 97	539,578 21	†10,629 41	3,730,245 60
Increase of earnings	86,710 69		1,192,307 46	133,968 55	1,217,734 46
Decrease of earnings		195,252 24			
Increase per cent.	$9\frac{5}{10}$%		221%		$32\frac{6}{10}$%
Decrease per cent.		$8\frac{6}{10}$%			
Operating expenses, 1882	605,103 83	1,134,568 90	703,305 34	101,888 36	2,544,866 43
Taxes, 1882	16,373 13	19,030 13	32,271 31		67,674 57
Total expense, 1882	621,476 96	1,153,599 03	735,576 65	101,888 36	2,612,541 00
Operating expense, including taxes, 1881	585,533 14	1,258,243 31	215,301 27	†4,306 05	2,063,383 77
Increase in 1882, including taxes	35,943 82		520,275 38	97,582 31	549,157 23
Decrease in " " "		104,644 28			
Increase per cent.	$6\frac{1}{2}$%		$241\frac{1}{2}$%		$26\frac{6}{10}$%
Decrease per cent.		8%			
Net earnings, exclusive of taxes, 1882	393,435 87	938 387 83	1,028,580 33	42,709 60	2,403,113 63
" " including " "	377,062 74	919,357 70	996,309 02		2,292,729 46
" " " " 1881	326,295 87	1,009,965 66	324,276 94	†6,323 36	1,673,185 19
Net increase " "	50,766 87		672,032 08	36,386 24	619,544 27
Decrease		90,607 96			
Net increase per cent.	$15\frac{6}{10}$%		$207\frac{1}{4}$%		$37\frac{1}{10}$%
Decrease per cent.		$8\frac{5}{10}$%			

*These figures represent "miscellaneous" only, as there is no pool account in the railroad division.
†All figures for 1881 in the Puget Sound division represent one month only.

IV.

Comparative Statement of Passenger and Freight Traffic.

	Total passengers.	Passengers one mile.	Average distance.	Passenger earnings.	Earnings per passenger per mile.	Earnings per passenger.
1882	274,318	38,790,085	141 3/10	$1,084,567 85	2 79/100 cents.	$3 95

	Tons freight carried.	Tons carried one mile.	Average distance per ton.	Freight earnings.	Earnings per ton per mile.	Earnings per ton.
1882	1,139,248	204,636,447	179 7/10	3,675,174 82	1 79/100 cents.	3 22

1881. Total passengers carried 167,787
Increase in 1882 106,531
1881. Total tons of freight carried 623,025
Increase in 1882 516,223

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V.

DR. *General Balance, June 30, 1882.* CR.

Assets.			Liabilities.		
Original construction and equipment		$10,837,669 33	Bond account—		
New railroad construction	$11,089,699 77		6,000 30-year 6% mortgage bonds, $1,000 each, dated July 1, 1879	$6,000,000 00	
New railroad equipment	1,239,081 42		Less retired by sinking fund	149,000 00	
		12,328,781 19			$5,851,000 00
Real estate		476,636 88	Capital stock—		
Stock Walla Walla and Columbia River R. R. Co.—			162,000 shares, $100 each, issued to June 30, 1882		16,200,000 00
1,000 shares, $100 each, cost		256,350 00	Scrip certificates		1,200,000 00
Stock Willamette Transportation and Locks Co.—			Bills payable		181,444 29
4,028 shares at $100 each, cost		189,360 00	Insurance and renewal fund		173,302 69
Insurance and renewal fund—			Accrued sinking fund		10,000 00
Bonds purchased and held for benefit of this fund		151,816 25	Accrued interest on scrip certificates, May and June, 1882		16,000 00
Bonds Willamette Transportation and Locks Co.—			Unpaid vouchers and pay-rolls		843,299 54
200 bonds, $1,000 each, bearing 10 per cent. interest		200,000 00	Profit and loss		1,809,446 03
Bills receivable		17,100 00			
Cash, treasurer	$27,723 35				
" ass't treasurer	116,202 58				
		143,925 93			
Sinking fund		14,977 90			
Supplies on hand		372,734 87			
Balances		1,295,140 20			
		$26,284,492 55			$26,284,492 55

VI.

Sinking Fund O. R. & N. Co.

By balance June 30, 1881		$12,692 40
Amount paid to trustee under terms of original mortgage during year ending June 30, 1882		60,000 00
Amount paid to trustee under terms of supplementary mortgage of September 1, 1880:		
Coupons due on $119,000 bonds for six months ending December 31, 1881	$3,570 00	
Coupons due on $149,000 bonds for six months ending June 30, 1882	4,470 00	
		8,040 00
		$80,732 40

CONTRA.

30 bonds retired Nov. 30, 1881—		
7 at 109¾ cost	7,682 50	
18 " 110 "	19,800 00	
5 " 109½ "	5,475 00	
30 bonds retired May 31, 1882—		
10 at 108 97/100 cost	10,897 00	
20 " 109½ "	21,900 00	
		$65,754 50
60 bonds retired during year—		
Nos. 15 | 20, 111 | 112, 524, 855 | '56, 1239 | '56, 1331, 1528, 2830, 3676, 4147, 4971, 4976 | '9, 5026 | '7, 5233, 5260, 5355 | '60, 5795, 5806 | '10, 5868, 5927 | '30.		
Balance June 30, 1882		14,977 90
		$80,732 40

182*r* *Special Meeting of Stockholders.*

DECEMBER 20TH, 1881.

A special meeting of the stockholders of the Oregon Railway and Navigation Company was held in Portland, December 20th, 1881, in pursuance of resolutions passed by the board of directors November 21st. The purpose of the meeting was explained in the following notice sent to the stockholders:

Office of the Oregon Railway and Navigation Company.

PORTLAND, OREGON, *November* —, 1881.

To----------

As a Stockholder of the Oregon Railway and Navigation Company.

Please take notice that on December twentieth, A. D. 1881, at noon of that day, at the company's office, at the city of Portland, in the State of Oregon, a special meeting of the stockholders of this company, the Oregon Railway and Navigation Company, will be held for the purpose and for the consideration of the matters referred to or contained in the resolution of the board of directors of the company passed November twenty-first, A. D. 1881, a copy of which resolution is hereto appended.

The stock transfer books will be closed for stockholders' meeting December first, and reopened December twenty-first, A. D. 1881. They will be closed for subscription rights December twenty-eighth, 1881, and reopened January fifth, A. D. 1882.

Yours respectfully,

THEO. WYGANT,
Secretary of the Oregon Railway and Navigation Company.

Resolved, That for the purpose of providing the sum of six million dollars for the completion of the company's system of roads and for additional equipment therefor, that a special meeting of the stockholders of this company be, and the same hereby is, called to be held at its office in Portland, Oregon, at noon, on December twentieth, one thousand eight hundred and eighty-one, for the purpose and for the consideration of the matters contained in the following resolution, to be submitted to the stockholders at said special meeting, to wit:

Resolved, That the capital stock of this the Oregon Railway and Navigation Company be increased from one hundred and twenty thousand shares, of the par value of one hundred dollars each, to one hundred and eighty thousand shares of the par value of one hundred dollars each, by issuing sixty thousand additional shares of the capital stock to the subscribers therefor, at par, upon payment to the company of the par value thereof.

That said sixty thousand additional shares be offered for subscription, at par, to stockholders of the company of record December twenty-eighth, one thousand eight hundred and eighty-one, and their assignees, in proportion to their respective holdings of stock on said last-named day.

That subscription books therefor be opened at the offices of the company in New York and Portland, Oregon, on December twenty-ninth, one thousand eight hundred and eighty-one, and closed on January fifth, one thousand eight hundred and eighty-two.

182*s* That all rights of subscription not availed on said last-named day shall be disposed of as the board shall direct.

That said subscriptions be payable at the offices of the company where made, at the following dates and in the following amounts:

January tenth,	eighteen hundred	and	eighty-two	twenty per cent.
February first,	"	"	"	ten per cent.
April first,	"	"	"	ten per cent.
May first,	"	"	"	twenty per cent.
June first,	"	"	"	ten per cent.
July first,	"	"	"	ten per cent.
August first,	"	"	"	ten per cent.
September first,	"	"	"	ten per cent.

That stock appertaining to the first two instalments will be delivered February first, and will be entitled to all subsequent dividends.

That stock appertaining to the next three instalments will be delivered June first, and will be entitled to all subsequent dividends.

That stock appertaining to the last three instalments will be delivered September first, and will be entitled to all subsequent dividends.

That the stock books of the company be closed for stockholders' meeting December first and opened December twenty-first, and be closed December twenty-eighth for the purpose of determining the rights of subscription and reopened January fifth, one thousand eight hundred and eighty-two.

STATE OF OREGON, }
County of Multnomah, } ss:

I, Theodore Wygant, secretary of the Oregon Railway and Navigation Company, certify that the foregoing is a true copy of a resolution passed by the board of directors of said company at a meeting held November 21, 1881.

THEO. WYGANT,

[SEAL.] *Secretary of the Oregon Railway and Navigation Company.*

In pursuance of the above notice the stockholders of this company met at the office of the company, at Portland, Oregon, on the twentieth day of December, A. D. 1881, at noon.

The president being absent, the vice-president called the meeting to order.

The secretary of the company presented a certified list of the stockholders, and the objects of the meeting, as set forth in the resolutions of the board of directors calling the same and in the notice of the meeting, having been stated, the following resolutions were offered by Mr. H. W. Corbett, who moved their adoption; which motion was seconded by W. S. Ladd, Esq.

The vice-president appointed H. W. Corbett teller.

The resolutions were adopted by the unanimous vote of all the stock represented at the meetings, as heretofore recorded.

Each stockholder, as his name was called, in person or by duly

constituted proxy, voted "aye," and also deposited a written ballot in favor of said motion.

Whereupon, said resolutions having received the vote of seventy-nine thousand and forty-four shares of the capital stock of this company, the entire capital stock of the company being one hundred and twenty thousand shares, the resolutions were declared by the vice-president of this company to have been adopted by the meeting.

Said resolutions are as follows:

Resolved, That the capital stock of this company, the Oregon Railway and Navigation Company, be increased from one hundred and twenty thousand shares, of the par value of one hundred dollars each, to one hundred and eighty thousand shares, of the par value of one hundred dollars each, by issuing sixty thousand additional shares of the capital stock to subscribers therefor, at par, upon payment to the company of the par value thereof.

Resolved, That said 60,000 additional shares be offered for subscription at par to stockholders of the company of record December 28, 1881, and to their assignees, in proportion to their respective holdings of stock on said last-named day.

Resolved, That subscription books therefor be opened at the offices of the company in New York and Portland, Oregon, on December 29, 1881, and closed on January 5, 1882.

Resolved, That all rights of subscription not availed of on said last-named day shall be disposed of as the board shall direct.

182*t* Resolved, That said subscriptions be payable at the offices of the company where made, at the following dates and in the following amounts:

January	10,	1882	twenty per cent.
February	1,	"	ten per cent.
April	1,	"	ten per cent.
May	1,	"	twenty per cent.
June	1,	"	ten per cent.
July	1,	"	ten per cent.
August	1,	"	ten per cent.
September	1,	"	ten per cent.

Resolved, That stock appertaining to the first two instalments will be delivered February first, and will be entitled to all subsequent dividends.

Resolved, That stock appertaining to the next three instalments will be delivered June first, and will be entitled to all subsequent dividends.

Resolved, That stock appertaining to the last three instalments will be delivered September first, and will be entitled to all subsequent dividends.

Resolved, That the stock books of the company be closed for stockholders' meeting December 1 and opened December 21, and be closed December 28 for the purpose of determining the rights of subscription and reopened January 5, 1882.

On motion, duly seconded, the meeting of stockholders adjourned.

J. N. DOLPH,
Vice-President.

THEO. WYGANT, *Secretary.*

I certify the foregoing to be a true copy of the minutes of the special meeting of stockholders of the Oregon Railway and Navigation Company held at Portland, Oregon, December 20, 1882.

THEO. WYGANT, *Secretary.*

Minutes of the Annual Meeting of the Stockholders of the Oregon Railway and Navigation Company.

JUNE 19TH, 1882.

The annual meeting of the stockholders of the Oregon Railway and Navigation Company was held at the office of the company, Portland, Oregon, on Monday, June 19th, 1882, at eleven o'clock a. m., in accordance with the by-laws of the company.

The president being absent, the meeting was called to order by the vice-president, J. N. Dolph, Esq.

The secretary presented a certified list of the stockholders.

The roll of stockholders was called.

The vice-president stated that the first thing in order was the election of eleven directors to serve for the ensuing year, and appointed Henry Failing, Esq., to act as teller. A ballot was then taken for directors with the following result:

Henry Villard	received	128,254	votes.
A. H. Holmes	"	128,254	"
W. H. Starbuck	"	128,254	"
C. H. Lewis	"	128,254	"
J. N. Dolph	"	128,254	"
S. G. Reed	"	128,254	"
Wm. Endicott, Jr.,	"	128,254	"
Geo. M. Pullman	"	128,254	"
Henry Failing	"	128,254	"
W. S. Ladd	"	128,254	"
C. H. Prescott	"	128,254	"

182*n* The vice-president declared Henry Villard, A. H. Holmes, W. H. Starbuck, C. H. Lewis, J. N. Dolph, S. G. Reed, Wm. Endicott, Jr., George M. Pullman, Henry Failing, W. S. Ladd, and C. H. Prescott duly elected directors for the ensuing year, and filed a certificate of the election.

The resolutions adopted by the board of directors at a meeting held May 3d, 1882, in regard to the filing of supplementary articles of incorporation were read by the secretary; whereupon Mr. Lewis offered the following resolution and moved its adoption, which motion was seconded by W. S. Ladd, Esq., to wit:

Resolved, That the directors of this company be, and they are

hereby, instructed and directed to file, as soon as they can be reasonably prepared and executed, supplementary articles of incorporation, amending article 3 of the present articles of this company by inserting at the end of subdivision VIII of article 3 of the original articles the following subdivision VIII:

To construct and equip the following railroad and telegraph lines, namely:

First. A line from the city of Walla Walla, in Washington Territory, in a generally northeasterly direction to Snake river, at or near Texas Ferry, and thence, following the valley of the Snake river, to Lewiston, in Idaho Territory, with a branch from a point on said line about three miles south of Grange City, in a generally easterly direction to the said city of Lewiston.

Second. A line from the said city of Walla Walla to the town of Pendleton, in the county of Umatilla, in the State of Oregon.

Third. A line from a junction with the present railroad of said company, between The Dalles and Umatilla, in the State of Oregon, at a point at or near the mouth of John Day's river, up the valley of said river a distance of about ninety miles to the big bend of said river, with a branch from said line from a point at or near the mouth of Rock creek, up the valley of said Rock creek to a point about thirty miles distant from the mouth thereof.

Fourth. A line from a junction with the road of said company, extending from The Dalles to Umatilla, in the State of Oregon, at or near the mouth of Willow creek, up the valley of Willow creek to the town of Heppner.

Fifth. A line from a point of junction with the present located line of said company's road, from Umatilla to Baker City, at or near the mouth of Butter creek, up the valley of Butter creek to a point thirty miles distant from the said point of junction.

And to maintain and operate such railroad and telegraph lines and branches and carry freight and passengers thereon and receive tolls for the same.

The roll of stockholders being called, the resolution was adopted by the unanimous vote of all the stock represented at the meeting, and more than three-fourths of all the capital stock of the company having been voted for the adoption of the resolution.

The vice-president declared the resolution duly adopted.

The vice-president submitted a report of the transactions of the company for the preceding year, prepared by the manager of the company, which was read and approved.

On motion of Mr. Failing, duly seconded, the meeting of stockholders adjourned.

J. N. DOLPH,
Vice-President and Chairman.

THEO. WYGANT, *Secretary.*

183 EXHIBIT C TO STIPULATION.

Oregon Railway and Navigation Company.

Fourth Annual Report of the President to the Stockholders for the Year Ending June 30th, 1883.

New York:
E. Wells Sackett & Rankin, printers and stationers,
34 Cortlandt street.
1883.

183*a* Oregon Railway and Navigation Company.

Fourth Annual Report of the President to the Stockholders for the Year Ending June 30th, 1883.

New York:
E. Wells Sackett & Rankin, printers and stationers,
34 Cortland street.
1883.

183*b* *Board of Directors.*

Henry Villard	New York city.
W. H. Starbuck	New York city.
A. H. Holmes	New York city.
Wm. Endicott, Jr.	Boston, Mass.
N. P. Hallowell	Boston, Mass.
Geo. M. Pullman	Chicago, Ill.
C. H. Lewis	Portland, Oregon.
Henry Failing	Portland, Oregon.
J. N. Dolph	Portland, Oregon.
W. S. Ladd	Portland, Oregon.
S. G. Reed	Portland, Oregon.
C. H. Prescott	Portland, Oregon.
H. W. Corbett	Portland, Oregon.

Officers.

Henry Villard	President.
J. N. Dolph	Vice-president.
C. H. Prescott	Manager.
R. E. O'Brien	Assistant manager.
Horace White	Treasurer.
C. J. Smith	Comptroller.
Theodore Wygant	Secretary and assistant treasurer.
T. H. Tyndale	Assistant secretary.
H. Thielsen	Chief engineer.
John Muir	Superintendent of traffic.
Transfer agent	Farmers' Loan and Trust Co., New York.
General counsel	Artemas H. Holmes, New York.

183*c* To the stockholders:

The fourth year of our corporate existence, like its predecessors, has been very satisfactory in its general results. It brought some disappointments, but, taken as a whole, it is marked by decided general progress. As will be shown in the following, in some respects the foundations for future prosperity were rendered broader and stronger than ever before.

At the close of the fiscal year 1881–'82 there was every indication that the wheat crop of Eastern Oregon and Washington would be larger by twenty-five per cent. than that of the preceding season; but it turned out that a period of protracted drouth and unusual heat injured the spring-sown wheat so seriously that, instead of the expected 130,000 tons, we carried less than 60,000 tons of wheat and flour down the Columbia to market. The effect was that our gross earnings were fully ten per cent. and our net earnings fifteen per cent. less than expected.

But this partial crop failure brought in a measure its own compensation. It taught wheat-growers the valuable lesson that in the dry climate of the Upper Columbia basin fall-sown wheat is a much safer crop than spring wheat. Accordingly, the bulk of this year's crop is fall-sown, with the result that, notwithstanding the recurrence of protracted great heat at the most critical time, our wheat tonnage during the present shipping season will exceed last year's by at least 100,000 tons.

The disappointment experienced in connection with the short crop of last year appears as of little moment when considered side by side with the marked advances the company has made during the past year in every other direction. In the first place, the stimulating effect of the approaching completion of the Northern Pacific main line upon the general growth of Oregon and Washington Territory, to which reference was made in my last report, was felt even more deeply and widely than heretofore. Immigration to the North Pacific Coast regions by our own lines of steamers and those of the allied companies was larger by nineteen per cent. and of a much better class than ever before. Business of every kind showed greatly increased activity. There was not a town, village, hamlet, or single farm in all Oregon and Washington that did not feel the appreciation of real estate and of almost every other property. We reaped a direct benefit from all this new development in the marked growth of our miscellaneous business. Full exhibits on this point are embodied in this report. It should be considered in this connection that, while in the year 1881–'82 eleven per cent. of our gross earnings were derived from the transportation of construction material for the Northern Pacific and for our own account, our earnings from the same source during 1882–'83 were only seven per cent. of our total gross. Again, we carried in the first mentioned year 260,497 tons of flour and wheat against 150,537 tons in the last mentioned (including Eastern Oregon and Washington Territory, as well as the Willamette Valley). That, notwithstanding the greatly diminished income from these two sources, we have more than held our own in

earnings affords striking and gratifying proof of a great gain in the general earning capacity of your property.

In the next place, mention must be made, as of even greater importance than the satisfactory increase of our general business, of the consequential developments in connection with the several lines tributary to our system that have taken place during the past year. The last difficulties in the way of the completion of the Northern Pacific Transcontinental line were removed. The line will, in fact, be open for general traffic by the time this report will be in your hands. Another hardly less important consummation during the year was the definite shaping of our relations to the other transcontinental system, under the control of the Union Pacific Railway Company, that is also seeking connection by rail with Oregon. This was brought about by means of a formal contract, bearing date of February 23, 1883, under the terms of which the point of junction of the two systems will be within a short distance of the eastern boundary of Oregon, and the entire Oregon and Washington Territory traffic from and to the Union Pacific and its extension, the Oregon Short Line, will pass over our Baker City Branch and main line. Both contracting parties are using the utmost exertions to carry the agreement into practical effect by the completion of their respective lines to the point of junction.

183*d* The general effect of this change will be to make our system the permanent channel for the entire transportation business between the North Pacific coast and the two tributary transcontinental systems, which represent a total of over seven thousand miles. I take much satisfaction in congratulating you upon this auspicious consummation, which has been my steady aim ever since the organization of our company, but which I hardly expected to see fully accomplished in this early stage of our existence.

I have the gratification of being able to record a similar success of much consequence in another direction. The Oregon and Transcontinental Company, owning a majority interest in the stock of this company, entered into arrangements during the year for the permanent lease, with the right to terminate it in three years, of the lines of the Oregon and California Railroad Company and for the completion of that company's main line to the California boundary, where it is to connect under existing contracts with the Central Pacific system. The lease has already taken effect, and the junction with the Central Pacific will be made within twelve months. The controlling interest which the Oregon and Transcontinental Company has thus secured, both in this and in the Oregon and California Company, relieves us permanently from the danger of competition for the traffic of Western Oregon, and assures to us a controlling influence over the traffic of the through rail line which will be formed by the completion of the Oregon and California from San Francisco to Puget Sound, through Northern California, Western Oregon, and Western Washington. This line, owing to the natural characteristics of that part of the Pacific coast, will be for all time the only railroad connecting those rich and rapidly growing regions. It is destined to supersede our steamship line between San Francisco and

Portland, at least as far as it has been the channel of the passenger travel. This was inevitable, but the relative decrease of our steamship receipts on this account will be more than compensated by a large increase of the earnings of our railroad lines.

With the tributary relations of the Northern Pacific, the Union Pacific, and Oregon and California Companies thus permanently established and the more rapid general growth of Oregon and Washington Territory, assured by the completion of the new transcontinental lines and the all-rail connection with California, it is not too much to expect that, great as the success of the company has been in the past, it will be far exceeded in the future.

Financial Record.

Issue of additional stock.

I explained to you in my last annual report (page 9) that a large additional sum of money over and above the then resources of the company would be required to complete the projected system of railroad lines. Subsequent estimates showed that about $6,000,000 would be required for that purpose, and the board of directors decided that it would be for the best interest of the stockholders to raise this amount in accordance with our past practice, viz., by a further issue of stock.

Accordingly, a special meeting of the stockholders was called to meet at Portland on December 9th, 1882, and to authorize the proposed increase of the capital stock and prescribe the manner in which the same should be effected.

The meeting was held at the time specified, 92 per cent. of all the outstanding stock being represented. By a unanimous vote the following resolutions were adopted, to wit:

"Resolved, That the capital stock of this the Oregon Railway and Navigation Company be increased from one hundred and eighty thousand (180,000) shares of the par value of one hundred dollars each to two hundred and forty thousand (240,000) shares of the par value of one hundred dollars each by issuing sixty thousand (60,000) additional shares of the capital stock to subscribers therefor at par upon payment to the company of the par value thereof.

That said sixty thousand (60,000) additional shares be offered for subscription at par to stockholders of the company, of record December 19th, 1882, and their assigns, in proportion to their respective holdings of stock on said last-named day, and that subscription books therefor be opened at the offices of the company, in New York and in Portland, Oregon, on December 20th, 1882, and closed on December 31st, 1882.

183c That all rights of subscription not availed of on said last-named day shall be disposed of as the board of directors shall direct.

That said subscriptions shall be payable at the offices of the company where the same shall be severally made on the following days and in the following amounts, viz:

January 6th, 1883	twenty per cent.
March 1st, 1883	twenty per cent.
May 1st, 1883	twenty per cent.
July 2d, 1883	twenty per cent.
September 1st, 1883	twenty per cent.

And that stock appertaining to said subscriptions be delivered on and after September 1st, 1883, upon payment of all the instalments thereon.

That a rebate of interest at the rate of 6 per cent. per annum be allowed upon anticipated payments of the several instalments.

That certificates be issued to each subscriber, representing the number of shares of stock so subscribed for and indicating the number and amount of instalments paid thereon.

That the stock transfer books of the company be closed for the special meeting of the stockholders on November 28th, 1882, and reopened December 12th, 1882, and be again closed for the purpose of determining the rights of subscription for the additional shares of stock on December 19th, 1882, and reopened January 2d, 1883."

The result of the meeting was announced to the stockholders by circular, dated December 10, 1882, and upon the opening of the subscription books on the day specified the entire amount of $6,000,000 was at once subscribed.

The total expenditures on construction and equipment account from July 1st, 1882, to July 1st, 1883, were—

Railroad division	$4,485,317	
Ocean division	234,925	
River division	55,238	
Puget Sound division	221,796	
		$4,997,276

The receipts from subscriptions for new stock during the year were—

From balance of subscriptions for stock issued in accordance with vote of stockholders December 20th, 1881	$1,617,930
From receipts to July 1st, 1883, for subscriptions to new stock to be issued in accordance with vote of stockholders December 9th, 1882	3,800,283
From sale of real estate, being the proceeds of the sale of our terminal grounds and the improvements thereon to the Northern Pacific Terminal Company, as set forth in another part of this report	834,227
(Of this amount $286,516 appears in the receipts from sale of real estate, while $547,711, the amount received for betterments, was credited to construction.)	
Add surplus profits for fiscal year ending June 30th, 1883	226,284
Total means for construction purposes for year ending July 1st, 1883	$6,478,724

Subsequently to the presentation of the last annual report it was decided, in order to meet the Oregon extension of the Union Pacific, to extend the Baker City Branch about fifty miles further east than was then contemplated. This extension, together with the necessity of reducing the grades and curvatures on the mountain division of the line with reference to the heavier traffic assured by the connection with the Union Pacific system, and, further, the great amount of rock-work encountered in the same division, will add to the cost of the line about $1,800,000.

183*f*	As nearly as can be estimated there will be required for the completion of the Baker City and Pendleton and Walla Walla Branches, from June 30, 1883, about	$4,000,000
	There remains to be paid on account of the Puget Sound boats	214,000
	Requirements for construction for next fiscal year	$4,214,000

The means in hand available June 30, 1883, for the completion of the company's lines amount to about $3,314,000, leaving a deficiency of $900,000 to be provided for. As no portion of this will be required before midsummer, 1884, your board deem it best to await the result of the company's traffic during the ensuing half year before presenting any plan for meeting the requirement.

Traffic.

The mileage operated on the ocean, Puget Sound, and river lines remains the same as the year before.

To the railroad mileage the following additions have been made during the year, viz:

Portland to Bonneville	40.9
Umatilla to Mikecha	78.0
On Walla Walla and Pendleton branch	6.0
Total	124.9

Making the total railroad mileage operated June 30th, 1883, as follows:

Standard gauge	462 miles.
Narrow gauge (leased lines)	150 "
Total	612 miles.

And making the grand total mileage operated by the company 2,187 miles.

Your attention is invited to the subjoined statistics of freight and passenger traffic for the year as compared with those of the previous year:

	1882–'3.	1881–'2.	Increase.
Total number passengers transported on ocean, railroad, and river divisions	361,758	274,318	87,440
			Decrease.
Total tonnage of freight	690,639	691,154	515

It thus appears that, although the freight tonnage was about the same as in the previous year and the number of passengers carried much greater, there has been no considerable increase of earnings. This result is due to the fact that we carried, as already mentioned elsewhere, only 150,537 tons of wheat and flour against 260,497 tons in the previous year, and that while the transportation of grain down the Columbia river yields $7.00 a ton, the freight from San Francisco to Portland, in which the gain in volume was made, yielded only an average of $3.75 a ton.

The following is a condensed statement of the gross earnings, operating expenses, and net earnings of the company for the fiscal year:

Comparative Earnings of All Divisions, 1882–'3.

Gross earnings.	Year ending June 30th, 1882.	Year ending June 30th, 1883.	Increase.
Passenger	$1,084,567 85	$1,320,035 22	$235,467 37
Freight	3,675,174 82	3,408,179 31	(a) 266,995 51
Mail and express	96,932 55	154,509 80	57,577 25
Miscellaneous	91,304 84	217,788 24	126,483 40
Total	$4,947,980 06	$5,100,512 57	$152,532 51

(a) Decrease.

Increase per cent. in gross earnings, 3%.

Total gross earnings, 1882–'3	$5,100,512 57
" operating expenses	2,624,170 66
Net earnings	2,476,341 91
" " 1881–'2	2,403,113 63
Increase	$73,228 28

Increase per cent. in net earnings, 3%.

The ratio of operating expenses was exactly the same as last year, viz., 51.4.

183*g* The completion of the Northern Pacific main line and of the Oregon Short Line will work great changes in the course of our traffic. As far as the former road is concerned, the changes have already commenced. In the case of the latter they will come about later. Their nature and extent will be governed by the provisions of the contract of February 23d, 1883, between the Northern Pacific, the Oregon Short Line (Union Pacific), and the Oregon Railway and Navigation Companies.

Our superintendent of traffic has made a careful study of the practical effect under these provisions of the opening of our two transcontinental connections and believes that the change in the currents of traffic that will result therefrom will give a very considerable increase of earnings to this company.

Construction and Equipment.

As in previous years, a great amount of work has been accomplished in the construction department. After the long delays explained in my last report, the main line was finally finished throughout its entire length by the completion of the section from the Cascades to Portland on October 3d, 1882. The first regular through train left Portland November 20th, 1882. The expenditure on this portion of the line during the year amounted to $1,112,912.

During two years' experience in operating the Columbia River Line it became apparent that without additional protection of the road-bed from injury by the regular summer floods economical operation was hardly practicable. Upon the recommendation of the engineering department the management authorized such measures as would ensure absolute protection.

Accordingly, during the past year the track was strongly riprapped for a distance of 207,670 lineal feet, between Portland and Wallula. The line was also considerably improved by the reduction of heavy curvatures and the substitution of steel in place of iron rails for a distance of thirty-two miles. For these various betterments $509,554 was expended.

During the year the Baker City branch was fully completed to a point near the summit of the Blue Mountains, and the work between that point and the southern slope of the mountains well opened. Owing to the scarcity of railroad labor, caused by the construction of other lines, the contractors experienced considerable difficulty in obtaining the requisite working force. This difficulty has been overcome since the opening of the present working season.

Every effort is being made to complete this line to a connection with the Oregon Short Line at the earliest practicable moment. There are now finished seventy-eight miles of the line, including by far the heaviest portion of the work. Sixty-five miles are open to traffic.

The total expense on the Baker City branch during the year was $2,018,735, which includes rails for the entire distance.

On the Grange City branch $196,968 were expended for betterments during the year. At Prescott the yard facilities were largely increased, that town being now the terminus of the middle division.

The Walla Walla and Pendleton branch is completed to Milton and definitely located from Pendleton to Centerville. For this latter portion of the line we have obtained the right of way through the Umatilla Indian reservation. A party of engineers are now engaged in making the final location between Centerville and Blue Mountain station, which will complete the line from Walla Walla to Pendleton.

The following table shows the amount of grading and track-laying accomplished to the end of the fiscal year:

Table Showing Amount of Grading and Track-Laying During and to the End of the Fiscal Year Ending June 30th, 1883.

Location.	Grading.		Track-laying.					
			During fiscal year.			Total to end of year.		
	During fiscal year.	Total to end of year	Main line.	Side tracks.	Total.	Main line.	Side tracks.	Total.
	Miles.		Miles.					
Portland and Dalles	8.0	85.9	30.9	0.6	31.5	85.9	6.3	92.2
Dalles and Celilo	.....	12.7	.....	.....	.....	12.7	5.2	17.9
Celilo and Wallula	.....	113.1	.....	2.1	2.1	113.1	8.2	121.3
Wallula and Walla Walla	.....	31.2	.....	.....	.....	31.2	2.9	34.1
Walla Walla and Riparia	.....	55.7	.....	0.8	0.8	55.7	6.4	62.1
Bolles June. and Dayton	.....	13.0	.....	.....	.....	13.0	2.0	15.0
Walla Walla and Milton	13.1	13.1	13.1	0.3	13.4	13.1	0.3	13.4
Milton and Blue Mountain	.....	Gauge	change d.		.....	6.8	0.4	7.2
Umatilla and Snake river	33.0	108.0	44.7	0.7	45.4	77.7	2.2	79.9
Palouse June. and Colfax*	48.0	86.0	32.3	2.1	34.4	32.3	2.1	34.4
Total	102.1	518.7	121.0	6.6	127.6	441.5	36.0	477.5

*Being built by the Oregon and Transcontinental Co. in connection with our system.

183*h* The filling up of the grounds below Albina and their preparation for the erection of shops, warehouses, and other terminal facilities prior to the transfer of those properties to the Northern Pacific Terminal Company was prosecuted with very little interruption, and excellent progress made in this undertaking. The large wharf at Albina was completed, as were also the coal-bunkers and wheat warehouse and double-track incline for the transfer of freight and other small temporary structures. All of this property was turned over to the Northern Pacific Terminal Company on December 14th, 1882, and that company is now vigorously continuing the work.

The construction of the dry-dock, although meeting with great hindrance to rapid progress on account of the character of the material to be excavated and the periodical high stages of the river, is proceeding satisfactorily, with a prospect of its speedy completion.

Our railroad equipment, steamships, and steamboats have all been kept in thorough repair and are to-day in a very perfect condition.

Early in the spring of this year it became evident that the local Puget Sound trade would shortly demand greatly increased facilities. The board of directors therefore authorized the president to provide two new iron and steel side-wheel steamboats, and these were contracted for at a cost of $285,000 each. Both boats are launched, and will be completed some time in October. They are 270 feet keel, 290 feet over all, and 40 feet beam. They will be furnished with every modern appliance for comfort and safety.

The following is a list of the structures erected during the year:

Machine shops at Prescott.
11 freight and passenger depots.
2 eating-houses.
4 stock yards.
1 round-house.
13 section-houses for white laborers.
12 section-houses for Chinese laborers.
14 tool-houses.
8 water-tanks.
4 windmills.
1 baggage-room and offices.
1 sand and oil house.
2 turn-tables.

The following additional equipment was provided during the year:

14 locomotives.
3 first-class coaches.
1 baggage car.
1 mail and express car.
10 caboose cars.
1 pay car.
126 box cars.
10 stock cars.
16 flat cars, narrow-gauge div.
69 hand push cars.
40 dump cars.
3 tool cars.
3 snow-plows.

Terminal Construction.

Under this head I explained in my last annual report the reasons that led to the abandonment of our plan for providing terminal facilities on our property in South Portland. I also described to you at some length the project of providing them in the northern part of the city, in conjunction with the Northern Pacific and Oregon and California Railroad Companies, at a point most convenient for the common purposes of the three companies.

In pursuance of this plan this company proceeded to acquire a

large body of real estate in North and East Portland, and commenced the necessary improvements thereon.

It was agreed between this company and the other two companies, after mature deliberation, that a fourth company should be organized by which all the required terminal improvements should be provided.

Accordingly the Northern Pacific Terminal Company of Oregon was organized under the general laws of Oregon, with a perpetual charter and a stock capital of $3,000,000, held in the following proportions by the three companies for whose benefit the project was formed:

Northern Pacific R. R. Co.	40 per cent.
Oregon Railway and Navigation Co.	40 " "
Oregon and California R. R. Co.	20 " "

A total issue of $5,000,000 six per cent. gold bonds by the terminal company was authorized, but only $3,000,000 of this
1883 amount was issued and was readily sold at par. With the proceeds there has been acquired extensive real estate in the city of Portland, on the left bank of the Willamette, and in East Portland, on the opposite bank, including all the properties purchased and improved by this company, for which it received cost and six per cent. interest, according to agreement, amounting to $834,227.93.

In Portland proper the property of the terminal company comprises some sixty acres, adjoining the business portion of the city, with the use of 2,200 feet of dock facilities on the river bank. Union passenger and freight depots will be erected thereon. In East Portland the purchases comprised 246 acres, with a mile of water front, on which wharves, warehouses, coal and ore bunkers, a round-house, and extensive machine shops will be built. The respective properties and improvements will be connected by a bridge over the Willamette river, now being constructed by the Northern Pacific Railroad Company.

Under the head of "construction and equipment" reference has been made to the amount of work accomplished on these terminal properties by this company prior to the transfer to the terminal company.

You are respectfully referred to the financial and traffic statements and the minutes of the annual and special meetings of the stockholders, printed in the appendix.

I take pleasure in testifying to the faithful and intelligent performance by the officers and employees of the company of their respective duties during the year.

By order of the board of directors:

H. VILLARD, *President.*

New York, October 1st, 1883.

183*j* APPENDIX.

183*k* I.

Profit and Loss Account, June 30th, 1883.

CREDIT.

Gross earnings:		
Ocean division	$980,038 78	
River "	1,010,144 53	
Railroad "	2,810,402 11	
Narrow-gauge division	54,477 84	
Puget Sound "	245,449 31	
		$5,100,512 57
Interest on open accounts and bills receivable		50,950 43
Interest on bonds of Willamette Transportation and Locks Co., owned by this company, from March 15th, 1882, to June 30th, 1883		25,834 00
Rents:		
Received from rent of warehouses, narrow-gauge division, and other property		8,382 85
		$5,185,679 85

DEBIT.

Operating expenses:		
Ocean division	$570,025 00	
River "	831,478 68	
Railroad "	969,984 06	
Narrow-gauge division	81,935 97	
Puget Sound "	170,746 95	
		$2,624,170 66
Taxes		82,295 35
Interest—		
On bonds:		
6 months' interest, July 1st, 1882, to January 1st, 1883, on $5,821,000, at 6 per cent.	$174,630 00	
6 months' interest, January 1st, 1883, to July 1st, 1883, on $5,788,000, at 6 per cent.	173,640 00	
On scrip certificates:		
1 year's interest, July 1st, 1882, to June 30th, 1883, on $1,200,000, at 8 per cent. per annum	96,000 00	
		444,270 00

Dividends	1,584,000 00
Sinking fund	60,000 00
Supplemental sinking fund	11,730 00
General expenses:	
Services Farmers' Loan and Trust Company, paying dividends and interest on bonds and transferring stock, etc., August 21, 1879, to August 21, 1882	7,500 00
Rental:	
Oregonian Railway Co., Limited, for year ending June 30th, 1883	145,429 28
	$4,959,395 29
Surplus profits	226,284 56
Add value of bonds retired by sinking fund during the year, at par	63,000 00
Net surplus during the year	$289,284 56

1881 II.

Receipts and Disbursements.

Receipts.

As per profit and loss statement		$5,185,679 85
From sale of capital stock:		
Proportion of 2d $6,000,000 increased capital stock paid up and issued	$1,800,000 00	
Less advanced payments made by subscribers last year	182,069 82	
	$1,617,930 18	
Assessments on 3d $6,000,000 increased capital stock	3,600,000 00	
Payments on 3d $6,000,000 increased capital stock made by subscribers prior to assessments	200,283 39	
		5,418,213 57
Sale of real estate		286,515 72
Walla Walla and Columbia River R. R. Co.:		
Sale of equipment and material		38,360 89
		$10,928,770 03

Disbursements.

As per profit and loss statement		$4,959,395 29
For additions to property:		
Construction and equipment	$497,138 41	
Construction, railroad	3,869,442 91	
Equipment, railroad	630,695 55	
		4,997,276 87
For sinking fund:		
Annual payment under mortgage	$60,000 00	
Interest on bonds retired	11,730 00	
		71,730 00
For Walla Walla and Columbia River R. R. Co.:		
Construction, main line	$14,508 63	
Blue Mountain Branch, change of gauge	10,464 79	
		24,973 42
		$10,053,375 58

III.—*Comparative Statement of Earnings, Operating Expenses, and Percentages, Year Ending June 30th, 1883.*

	Ocean division.	River division.	Railroad division.	Narrow-gauge division.	Puget Sound division.	Total.
Earnings, passenger	361,206 72	253,231 50	536,291 27	9,912 28	159,393 45	1,320,035 22
" freight	529,869 13	680,211 50	2,108,886 94	41,200 44	48,011 30	3,408,179 31
" mail and express	32,360 38	16,659 37	67,216 40	569 95	37,703 70	154,509 80
" pool and miscellaneous*	56,602 55	60,042 16	98,007 50	2,795 17	340 86	217,788 24
Total earnings, 1883	980,038 78	1,010,144 53	2,810,402 11	54,477 84	245,449 31	5,100,512 57
Total earnings, 1882	998,539 70	2,072,956 73	1,673,740 93	†58,144 74	144,597 96	4,947,980 06
Increase			1,136,661 18		100,851 35	152,532 51
Decrease	18,500 92	1,062,812 20		3,666 90		
Increase per cent.			$67\frac{9}{10}\%$		$69\frac{7}{10}\%$	3%
Decrease per cent.	$1\frac{8}{10}\%$	$51\frac{3}{10}\%$		$6\frac{3}{10}\%$		
Operating expenses, 1883	570,025 00	831,478 68	969,984 06	81,935 97	170,746 95	2,624,170 66
Operating expenses, 1882	605,103 83	1,134,568 90	643,061 13	†60,244 21	101,888 36	2,544,866 43
Increase			326,922 93	21,691 76	68,858 59	79,304 23
Decrease	35,078 83	303,090 22				
Increase per cent.			$50\frac{8}{10}\%$	36%	$67\frac{5}{10}\%$	$3\frac{1}{10}\%$
Decrease per cent.	$5\frac{7}{10}\%$	$26\frac{7}{10}\%$				
Net earnings, 1883	410,013 78	178,665 85	1,840,418 05	Loss, 27,458 13	74,702 36	2,476,341 91
Net earnings, 1882	393,435 87	938,387 83	1,030,679 80	†2,099 47	42,709 60	2,403,113 63
Increase	16,577 91		809,738 25		31,992 76	73,228 28
Decrease		759,721 98		25,358 66		
Increase per cent.	$4\frac{2}{10}\%$		$78\frac{5}{10}\%$		$74\frac{3}{10}\%$	3%
Decrease per cent.		$80\frac{9}{10}\%$		$1,207\frac{8}{10}\%$		

* These figures include the pool earnings of the ocean division only, there being no pool account on the other divisions.
† All figures for 1882 on the narrow-gauge division represent eleven months only.

IV.

Comparative Statement of Passenger and Freight Traffic.

	Total passengers.	Passengers one mile.	Average distance.	Passenger earnings.	Earnings per passenger per mile.	Earnings per passenger.
1883	361,758	41,847,774	$115\frac{6}{10}$	$1,320,035 22	$.03\frac{15}{100}$	$3 64

	Tons freight carried.	Tons carried one mile.	Av'ge distance per ton.	Freight earnings.	Earnings per ton per mile.	Earnings per ton.
1883	690,639	167,667,870	$242\frac{7}{10}$	$3,408,179 31	$.02\frac{1}{100}$	$4 93

1882.	Total passengers carried	274,318
	Increase in 1883	87,440
1882.	Total tons of freight carried	691,154
	Decrease for 1883	515

V.

DR. *General Balance, June 30th, 1883.* CR.

Assets.		
Original construction and equipment		$11,334,807 74
New railroad construction	$14,959,142 68	
New railroad equipment	1,869,776 97	
		16,828,919 65
Real estate		190,121 16
Stock Walla Walla and Columbia River R. R. Co.— 1,000 shares, $100 each, cost		256,350 00
Stock Willamette Transportation and Locks Co.— 4,028 shares, $100 each, cost		189,360 00
Insurance and renewal fund— Bonds purchased and held for benefit of this fund		215,866 25
Bonds Willamette Transportation and Locks Co.— 200 bonds, $1,000 each, bearing 10 per cent. interest		200,000 00
Bills receivable		52,693 71
Cash, treasurer	$23,974 72	
" ass't treasurer	218,515 81	
		242,490 53
Sinking fund		17,976 00
Supplies on hand		693,210 09
Balances of all operating accounts		2,386,456 62
		$32,608,251 75

Liabilities.		
Bond account—		
6,000 thirty-year six per cent. mortgage bonds, $1,000 each, dated July 1st, 1879	$6,000,000 00	
Less retired by sinking fund	212,000 00	
		$5,788,000 00
Capital stock—		
180,000 shares, $100 each	18,000,000 00	
Assessments on subscriptions to fourth $6,000,000.00	3,600,000 00	
Paid by subscribers to fourth $6,000,000 previous to date of assessments	200,283 39	
		21,800,283 39
Scrip certificates		1,200,000 00
Bills payable		397,287 20
Insurance and renewal fund		268,932 44
Accrued sinking fund		10,000 00
Accrued interest on scrip certificates May and June, 1883		16,000 00
Unpaid vouchers and pay-rolls		863,892 62
Profit and loss		2,263,856 10
		$32,608,251 75

183*n* VI.

Statement of Sinking Fund to June 30th, 1883.

Balance June 30th, 1882		$14,977 90
Amount paid to trustee, under terms of original mortgage, during the year ending June 30th, 1883		60,000 00
Amount paid to trustee under terms of supplementary mortgage of September 1st, 1880; coupons due on $179,000 bonds for 6 months ending December 31st, 1882	$5,370 00	
Coupons due on $212,000 bonds for 6 months ending June 30th, 1883	6,360 00	
		11,730 00
		$86,707 90

CONTRA.

30 bonds retired November 30th, 1882:

10 at 108.86, costing	10,886 00	
10 at 108.99, "	10,899 00	
5 at 109.24, "	5,462 00	
5 at 109.50, "	5,475 00	
		32,722 00

33 bonds retired May 31st, 1883:

6 at 108.49, costing	6,509 40	
5 at 108.74, "	5,437 00	
5 at 108.99, "	5,449 50	
5 at 109.24, "	5,462 00	
5 at 109.49, "	5,474 50	
5 at 109.85, "	5,492 50	
2 at 109.25, "	2,185 00	
		36,009 90

63 bonds retired during the year:

Nos. 172 | 5, 438 | 40, 542 | 3, 725 | 7, 923, 1493 | 5, 1562 | 5, 1645, 1716 | 17, 2673, 2804, 3004, 3139 | 40, 3142 | 3, 3290, 3535, 3679, 4235 | 6, 4272, 4290, 4401, 4404 | 9, 4631, 4633, 4676, 4678, 4679, 4904, 4935, 4938 | 42, 5073, 5274, 5278 | 9, 5340, 5426, 5697

Balance June 30th, 1883	17,976 00
	$86,707 90

Minutes of the Special Meeting of the Stockholders.

DECEMBER 9TH, 1882.

A special meeting of the stockholders of the Oregon Railway and Navigation Company was held in Portland December 9th, 1882.

The purpose of the meeting was explained in the following notice sent to the stockholders:

Office of the Oregon Railway and Navigation Company.

PORTLAND, OREGON, *November 1st*, 1882.

To----------

As a Stockholder of the Oregon Railway and Navigation Company.

Please take notice that on December 9th, A. D. 1882, at noon of that day, at the company's office, at the city of Portland, in the State of Oregon, a special meeting of the stockholders of this company, the Oregon Railway and Navigation Company, will be held for the purpose and for the consideration of the matters referred to or contained in the resolution of the board of directors
1830 of the company passed October 30th, A. D. 1882, a copy of which resolution is hereto appended.

The stock transfer books will be closed for stockholders' meeting November 28th and reopened December 12th, A. D. 1882. They will be closed for subscription rights December 19th, 1882, and reopened January 2d, A. D. 1883.

Yours respectfully, THEO. WYGANT,

[SEAL.] *Secretary of the Oregon Railway and Navigation Company.*

Resolved, That for the purpose of providing the sum of six million dollars ($6,000,000) for the general purposes of this company a special meeting of the stockholders of this company be, and the same is hereby, called, to be held at the company's office, in Portland, Oregon, at noon on December ninth, one thousand eight hundred and eighty-two, for the purposes and for the consideration of the matters contained in the following proposed resolution, to be submitted to the stockholders at said special meeting, to wit:

"Resolved, That the capital stock of this the Oregon Railway and Navigation Company be increased from one hundred and eighty thousand (180,000) shares, of the par value of one hundred dollars each, to two hundred and forty thousand (240,000) shares, of the par value of one hundred dollars each, by issuing sixty thousand (60,000) additional shares of the capital stock to subscribers therefor at par upon payment to the company of the par value thereof.

"That said sixty thousand (60,000) additional shares be offered for subscription, at par, to stockholders of the company, of record December nineteenth, one thousand eight hundred and eighty-two, and their assigns, in proportion to their respective holdings of stock on said last-named day, and that subscription books therefor be opened at the offices of the company in New York and in Portland, Oregon, on December twentieth, one thousand eight hundred and eighty-two, and closed on December thirty-first, one thousand eight hundred and eighty-two.

"That all rights of subscription not availed of on said last-named day shall be disposed of as the board of directors shall direct.

"That said subscriptions shall be payable at the offices of the company where the same shall be severally made on the following days and in the following amounts, viz:

"January 6th, 1883, twenty per cent.
"March 1st, " twenty per cent.
"May 1st, " twenty per cent.
"July 2d, " twenty per cent.
"September 1st, " twenty per cent.

"And that stock appertaining to said subscriptions be delivered on and after September 1st, 1883, upon payment of all the instalments thereon.

"That a rebate of interest at the rate of six per cent. per annum be allowed upon anticipated payments of the several instalments.

"That certificates be issued to each subscriber representing the number of shares of stock so subscribed for and indicating the number and amount of instalments paid thereon.

"That the stock transfer books of the company be closed for the special meeting of the stockholders on November 28th, 1882, and reopened December 12th, 1882, and be again closed for the purpose of determining the rights of subscription for the additional shares of stock on December 19th, 1882, and reopened January 2d, 1883."

STATE OF OREGON, } *ss:*
County of Multnomah, }

I, Theodore Wygant, secretary of the Oregon Railway and Navigation Company, certify that the foregoing is a true copy of a resolution passed by the board of directors of said company at a meeting held October 30th, 1882.

[SEAL.] THEODORE WYGANT,
Secretary of the Oregon Railway and Navigation Company.

In pursuance of the above notice the stockholders of this company met at the office of the company, at Portland, Oregon, on the 9th day of December, A. D. 1882, at noon.

183*p* The president being absent, the vice-president called the meeting to order and submitted the proceedings of the meeting of the board of directors held October 30th, 1882, directing a special meeting of stockholders to be called for December 9th, 1882, and also the resolutions submitted by said directors' meeting, and which are embodied in the foregoing notice signed by the secretary.

Upon motion, duly seconded, the meeting adjourned, to meet again on Tuesday, December 12th, 1882, at 2 o'clock p. m., for the purpose of considering the above resolutions submitted by the vice-president.

Upon reassembling pursuant to adjournment the meeting was called to order by the vice-president, who presented a certified list of the stockholders of the company.

Upon the roll of stockholders being called 165,914 shares were found to be present, either in person or by proxy. The above-

mentioned resolutions were offered by Mr. H. W. Corbett, who moved their adoption, which motion was seconded by Mr. C. H. Lewis, and, having received the unanimous vote of all the stock represented at the meeting, as heretofore recorded, being more than two-thirds of the capital stock of the company (the entire capital stock of this company being 180,000 shares), the resolutions were declared by the vice-president of this company to have been adopted by the meeting in words and figures as set forth in the secretary's notice.

On motion, duly seconded, the special meeting of the stockholders adjourned.

J. N. DOLPH,
Vice-President and Chairman.

THEO. WYGANT, *Secretary.*

Minutes of the Annual Meeting of the Stockholders.

JUNE 18TH, 1883.

The annual meeting of the stockholders of the Oregon Railway and Navigation Company was held at the office of the company, Portland, Oregon, on Monday, June 18th, 1883, at eleven o'clock a. m., in accordance with the by-laws of the company.

The president being absent, the meeting was called to order by the vice-president, J. N. Dolph, Esq.

The secretary presented a certified list of the stockholders.

The roll of the stockholders was called and 168,276 shares were found to be present, either in person or by proxy. The minutes of the annual meeting held June 19th, 1882, and special meeting of stockholders held December 9th and 12th, 1882, were read, and, upon motion of Mr. Lewis, duly seconded, were approved.

Mr. Failing offered the following amendment to the by-laws of this company, which motion was seconded by Mr. Lewis, to wit:

That article 1 of the by-laws of this company—the Oregon Railway and Navigation Company—be, and the same is hereby, amended so as to read as follows:

"1. The officers of the corporation shall be a president, vice-president, manager, secretary and assistant secretary, treasurer and assistant treasurer, comptroller, and a board of thirteen directors."

The said amendment was adopted by a unanimous vote of all the stock represented.

183*q* The vice-president stated that the next thing in order was the election of thirteen directors to serve for the ensuing year. A ballot was then taken for directors with the following result:

Henry Villard	received	168,276	votes.
A. H. Holmes	"	168,276	"
W. H. Starbuck	"	168,276	"
C. H. Lewis	"	168,276	"
J. N. Dolph	"	168,276	"
S. G. Reed	"	168,276	"
Wm. Endicott, Jr.,	"	168,276	"

Henry Failing	received	168,276	votes.
W. S. Ladd	"	168,276	"
C. H. Prescott	"	168,276	"
George M. Pullman	"	168,276	"
N. P. Hallowell	"	168,276	"
H. W. Corbett	"	168,276	"

Whereupon the vice-president declared Henry Villard, A. H. Holmes, W. H. Starbuck, C. H. Lewis, J. N. Dolph, S. G. Reed, Wm. Endicott, Jr., Henry Failing, W. S. Ladd, C. H. Prescott, Geo. M. Pullman, N. P. Hallowell, and H. W. Corbett duly elected directors for the ensuing year, and filed a certificate of the election.

On motion of Mr. Lewis, duly seconded, the annual meeting of the stockholders adjourned.

J. N. DOLPH,
Vice-President and Chairman.

THEO. WYGANT, *Secretary.*

(Here follows map marked p. 183*r*.)

184 The said plaintiff, to further sustain the issues on its part, called Theodore Wygant as a witness in its behalf in said trial, who, being sworn as a witness, testified that he was the secretary of the Oregon Railway and Navigation Company and the custodian of the record of the proceedings of said company's board of directors. Said witness thereupon produced such record and read in evidence therefrom the proceedings of a meeting of said defendant's board of directors held on May 1st, 1882.

A transcript of the record of such proceedings so read, duly certified by said witness, as secretary of defendant, was thereafter, by consent of the parties, filed in said cause, and is as follows:

185 Oregon Railway and Navigation Company.

Certified Copy of Resolutions.

At a regular meeting of the board of directors of the Oregon Railway & Navigation Company, held at Portland, Oregon, on Monday, May 1st, A. D. 1882, the following resolutions were adopted, to wit:

On motion of Mr. Lewis, seconded by Mr. Prescott, it was

Resolved, That the president and assistant secretary or the vice-president and secretary of this company, as shall be most convenient, be, and they are hereby, authorized to execute, in the name of and on behalf of this company, under their official signatures and the corporate seal, an agreement for the purchase by this company from the "Oregon Warehouse Company" of the warehouses of that company along the line of the railroad of the "Oregonian Railway Co., L'd," of which the following is a copy, to wit:

Memorandum of agreement made the sixth day of April, in the year of our Lord one thousand eight hundred and eighty-two, between the "Oregon Warehouse Company" (hereinafter called the warehouse company), of the first part, and the Oregon Railway and Navigation Company (hereinafter called the railway company), of the second part.

First. The warehouse company hereby sells and the railway company hereby purchases all the property of the warehouse company, real and personal, of every nature and description and wheresoever situated. For further certainty, said property, or a portion thereof as may appear, is described as follows, viz:

All those certain warehouses of said warehouse company, with all their several appurtenances and belongings, situated in
186 the State of Oregon, at French Prairie, Woodburn, Forses, Townsend, Howell's Prairie, East Side Junction, Macleays, Waldo Hills, West Stayton, Scio, West Scio, South Santiam, Lengs, Lawson, Bellville, Brownsville, Armstrong's, Western Oregon Crossing, Dallas, and Airlie.

Second. The consideration of such sale is forty thousand twenty-one $\frac{30}{100}$ dollars, which shall be paid by the railway company to the warehouse company as follows: One-third thereof on the first day of November, one thousand eight hundred and eighty-two; one-third thereof on the first day of May, one thousand eight hundred and eighty-three, and the balance thereof on the first day of November, one thousand eight hundred and eighty-three. Such consideration money shall be evidenced by three promissory notes, executed and delivered by the railway company to the warehouse company at the time of the execution and delivery of this instrument, each of which shall be for one-third of such consideration money, shall be of even date with this instrument, shall by their terms be payable respectively on said first days of November, one thousand eight hundred and eighty-two, and of May and November, one thousand eight hundred and eighty-three, and shall bear interest from their dates, at the rate of six per cent. per annum, until their payment, respectively.

Third. It is the understanding of the parties hereto, at the time of the execution and delivery of this instrument, that all the said warehouses hereinbefore specified and any and all warehouses of the warehouse company hereby sold are situated on land or property owned by a certain corporation known as the Oregonian Railway Company, Limited; but it is expressly provided and agreed that,
187 in the event of any of such warehouses being situated on other property or land than that of the said Oregonian Railway Company, Limited, as aforesaid, the warehouse company, upon being notified of the fact, shall forthwith, at its own expense, procure a good and perfect title in fee simple in and to the railway company of the property or land upon which such warehouse or warehouses may be situated.

Fourth. The purchase shall be completed upon the execution and delivery of this instrument, and thereupon and thereafter the ware-

house company shall execute and do all such assurances and things as shall be requisite for carrying the sale into effect and transferring the property to the railway company.

In witness whereof the said party of the first part, the Oregon Warehouse Company, hath hereunto caused its corporate seal to be affixed and these presents to be subscribed by its president and attested by its secretary, and the party of the second part, the Oregon Railway and Navigation Company, hath hereunto caused its corporate seal to be affixed and these presents to be subscribed by its president and attested by its secretary, executed in duplicate.

And to execute in the name of and on behalf of this company, under their official signatures and the corporate seal of this company, the promissory notes of this company to said warehouse company mentioned in said agreement.

On motion of Mr. Prescott, seconded by Mr. Lewis, it was

Resolved, That the president and assistant secretary or vice-president and secretary of this company, as may be most convenient, be, and they are hereby, authorized and directed to execute,
188 in the name of and on behalf of this company, under their official signatures and the corporate seal of this company, and deliver to James Steel & Co. a lease from this company to the said Steel & Co. of the warehouses of this company purchased from the Oregonian Warehouse Company whenever the said Steel & Co. shall have caused a bond in the penalty of forty thousand dollars to be executed by James B. Montgomery and delivered to this company on condition *for* the faithful performance by the said Steel & Co. of all the terms and conditions of said lease.

STATE OF OREGON, }
County of Multnomah, } *ss*:

I, Theodore Wygant, do hereby certify that I am the duly elected and qualified secretary of the Oregon Railway & Navigation Company, a corporation duly incorporated and organized under the laws of the State of Oregon, and that I am the lawful custodian and have in my custody the records of the minutes of the proceedings of the meetings of the stockholders and board of directors of said company; that I have compared the foregoing copy of the proceedings and resolutions therein set forth with the original records in my possession, and the same is a just, full, and correct copy of said original as the same remains in my custody.

In witness whereof I have hereunto set my hand and affixed the seal of said company this seventeenth day of May, 1886.

[Seal O. R. & N. Co.]

THEODORE WYGANT,
Secretary Oregon Railway & Navigation Company.

Said witness, Theodore Wygant, also identified as an original writing, executed by the parties thereto, a lease of said warehouses, referred to in said foregoing resolutions, to James Steel, named in said resolutions, of which the following is a copy:

189 Memorandum of agreement made the — day of April, in the year of our Lord one thousand eight hundred and eighty-two, between the Oregon Railway & Navigation Company, of Oregon (hereinafter called the lessor), of the one part, and James Steel & Co., of Portland, Oregon (hereinafter called the lessees), of the other part.

In consideration of the rent hereinafter reserved and of mutual promises and agreements herein it is agreed as follows:

First. The lessor hereby has let and does hereby grant, demise, and let unto the lessees all the certain warehouses, with their appurtenances, belonging to the lessor and situated as follows:

At French Prairie, Woodburn, Foises, Townsend, Howell's Prairie, East Side Junction, MacLeays, Waldo Hills, West Stayton, Scio, West Scio, South Santiam, Lengs, Lawson, Bellville, Brownsville, Armstrong's, Western Oregon Crossing, Dallas, and Airlie, all in the State of Oregon.

The term of this lease shall be five years, commencing on the first day of July, one thousand eight hundred and eighty-two.

The lessees are to pay the lessor four thousand dollars per annum, payable in advance, at the city of Portland, Oregon, semi-annually, on the first days of July and January in each year of said term, and the lessees do covenant to pay to the lessor the said yearly rent as herein specified.

Second. The lessees shall within reasonable time, in sufficient and substantial manner, build other warehouses, if the same shall be necessary, to accommodate the business of the lessor, and upon being thereto required by the lessor, at Edleman's, Arnsprigger's, Coburg, La Fayette, Silverton, and elsewhere on the line or lines of the lessor.

190 Third. Provided the capacity and character of the said warehouses now built and situated as aforesaid, or to be hereafter built as provided herein, are sufficient for storage requirements and to accommodate the business of the lessor, then the lessor shall not itself build or erect any warehouses or elevators for the storage or handling of wheat or other cereals upon the lands owned by or held under lease by the lessor, and the lessor shall not, nor shall its assigns, extend its switches or side tracks for such purpose.

Fourth. The lessees shall at their own expense make such additions and alterations to said warehouses as the business shall demand and as shall be necessary to accommodate the business of the lessor; but at the end or other termination of the said lease a fair valuation shall be made and allowed to the lessees for such additions and alterations, and expenses of the lessees in such respect shall be paid them, allowing for reasonable wear and tear.

Fifth. The lessees shall not charge for the storage and cleaning of wheat or other cereals in said warehouses more than a reasonable sum, which is ascertained to be the average price that may from time to time be charged for storage and cleaning of like character on the lines of the Oregon & California Railroad Company and the Western Oregon Railway Company.

Sixth. Freights from any of said warehouses to Portland by the lines of the lessor are not to be charged at a higher rate than are from time to time charged by the Oregon & California Railroad Company from points on said company's lines equally distant from Portland, Oregon.

Seventh. The lessor shall furnish to the lessees rolling stock for transportation of freight to the extent of the ability of the
191 lessor with its present equipment.

Eighth. The lessor shall furnish to the lessees and to one agent of the lessees for each warehouse during the continuance of this lease free transportation over the lines, and also over boats running in connection with the lines of the Oregonian Railway Company, Limited, and shall furnish without charge the use, for business purposes, of telegraphic facilities over the telegraph lines of said Oregonian Railway Company, Limited. The lessor shall make no charge against the lessees for moving machinery for cleaning grain from any one warehouse to another on the lines of said lessor: Provided, however, that such machinery shall be loaded and unloaded by or at the expense of the lessees.

Ninth. The lessees shall pay all taxes, assessments, or other public charges upon said warehouses, and shall at their own expense keep the same fully insured in proper insurance companies, and shall keep the same in good repair and return them to the lessor at the expiration of this said lease in as good order as they now are, ordinary wear and tear and damage of the elements excepted.

Tenth. At the expiration of the term hereby granted, and provided the lessees have performed and kept all the agreements and covenants herein contained, the lessees, at their option, shall be entitled to a renewed or further lease of said premises upon the same terms and for the same period as in this lease, but such renewed or further lease shall not contain necessarily an agreement of further renewal.

Eleventh. The lessees shall ship all grain to or from the said warehouses over the lines of the Oregonian Railway Company, Limited.

Twelfth. The lessees, to facilitate their operations, shall be permitted to make reasonable use of the employees of the lessor,
192 known as station agents, at stations of the lessor's lines where said warehouses may be situated, and so far only as shall not interfere with the duties of such employees as such station agents, and in such cases the lessees shall bear and pay one-third of the cost of such employees while making use of the same.

Thirteenth. Should the lines of the Oregonian Railway Company, Limited, be changed at any time during the continuance of this lease so as to leave any of the said warehouses off from the lines of the said Oregonian Railway Company, Limited, then this lease herein and the agreements herein, so far as they shall apply to such warehouses, may be surrendered at the option of the lessees.

Fourteenth. Shipments of grain as herein provided, made by the lessees, are to be delivered at such warehouses or docks in Portland,

East Portland, or Albina as the lessees may from time to time determine upon, whether the same are carried to said places by boat or rail, subject, however, to the usual charges for wharfage if on the docks of the lessor.

Fifteenth. The lessees may sub-let any of said warehouses, subject to the provisions of this instrument, provided such sub-lessees are acceptable to the company.

Sixteenth. The lessor doth covenant that the lessees, on paying the said yearly rent as provided herein and on performing each and all of the agreements herein contained, which are made and to be considered as covenants on the part of the lessor and lessees respectively, shall and may peaceably and quietly have, hold, and enjoy the said demised premises for the term aforesaid.

Seventeenth. The covenants and agreements contained in this instrument are binding on the parties hereto, their successors and legal representatives.

193 In witness whereof the said lessor, the Oregon Railway & Navigation Company, hath hereunto caused its corporate seal to be affixed and these presents to be subscribed by its president and attested by its secretary, and the said lessees, James Steel & Co., have hereunto set their hand and seal the year and day above written.

Executed in duplicate.

[Corporate Seal O. R. N. Co.]

THE OREGON RAILWAY & NAVIGATION COMPANY,
By J. N. DOLPH, *Vice-President.*

Attest: THEO. WYGANT, *Secretary.*

JAMES STEEL,
Doing Business under the Firm Name of James Steel & Co.

STATE OF OREGON, }
County of Multnomah, } ss:

Be it remembered that on this thirteenth day of June, A. D. 1882, before me, the undersigned, a notary public in and for the said county of Multnomah and State of Oregon, duly commissioned and qualified, personally came J. N. Dolph, vice-president of the Oregon Railway & Navigation Company, and Theodore Wygant, secretary of the Oregon Railway & Navigation Company, whose names are subscribed to the foregoing instrument as parties thereto and as vice-president and secretary of said Oregon Railway & Navigation Company, both personally known to me to be the individuals named and described in and who executed the said instrument, and they severally acknowledged to me that he, said J. N. Dolph, as vice-president, and he, the said Theodore Wygant, as secretary of

194 the Oregon Railway & Navigation Company, executed the foregoing instrument as and for the act and deed of said Oregon Railway & Navigation Company freely and voluntarily and for

the uses and purposes therein mentioned; and he, the said Theodore Wygant, being by me duly sworn, did depose and say that he is the secretary of the Oregon Railway & Navigation Company and resides at Portland, Multnomah county, Oregon; that he is the legal custodian of and is acquainted with and has in his possession the corporate seal of the Oregon Railway & Navigation Company; that the seal affixed to the foregoing instrument is such corporate seal; that the same was so affixed by him as secretary of said company on the thirtieth day of June, A. D. 1882, by order of the board of directors of said company, and that he signed his name thereto by the like order of the board of directors of said company.

In witness whereof I have hereunto set my hand and [SEAL.] affixed my official seal, at the city of Portland, Oregon, the date first above written.

W. T. HUME,
Notary Public in and for the State of Oregon.

STATE OF OREGON, } ss:
County of Multnomah, }

Be it remembered that on this 30th day of June, A. D. 1882, before me, the undersigned, a notary public in and for said county and State, personally appeared the within-named James Steel, who is personally known to me to be the identical person described in and who executed the foregoing instrument, and acknowledged to me that he executed the — freely and voluntarily for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and seal the day and year last above written.

[SEAL.]

W. T. HUME,
Notary Public in and for Oregon.

195 To the introduction in evidence of each of the exhibits referred to in the testimony of the witness Prescott and marked respectively as Exhibits A, B, and C to stipulation, and of the record of proceedings of defendant's board of directors produced by the witness Wygant, and to the introduction in evidence of the agreement of lease by the defendant of its warehouses therein mentioned to James Steel & Co., produced by said witness Wygant, defendant at the time objected upon the ground that the same were immaterial, but the said several objections were overruled by the court; to which rulings defendant duly excepted, which exceptions were allowed.

Plaintiff also offered in evidence that certain act of the Legislative Assembly of the State of Oregon, approved October 22nd, 1880, entitled "An act to grant the Oregonian Railway Company, Limited, the right of way and station grounds over the State lands and terminal facilities upon the public grounds at the city of Portland," and section 2 of that certain other act of said Legislative Assembly entitled "An act to provide for the construction to the city of Portland of the uncompleted portion of the narrow-gauge system of railways now in operation in Western Oregon and to provide termi-

nal facilities therefor upon the public grounds within said city," approved February 24th, 1885, and said act and section were duly admitted in evidence on said trial.

196 Plaintiff, to further sustain the issues on its part, offered in evidence a duly certified transcript of the judgment-roll No. 916 in an action numbered 1035 in this court, wherein the plaintiff herein was plaintiff and the defendant herein was defendant and wherein judgment was rendered on March 18th, 1885, in favor of said plaintiff for the sum of $68,131, with interest, making in all the sum of $72,715.43, and costs and disbursements taxed at $599.17, but the defendant objected thereto on the ground that the same was immaterial, which objection was overruled by the court; to which overruling defendant duly excepted, which exception was allowed by the court. Thereupon said transcript was admitted in evidence and is as follows:

197 (Here is omitted index. See general index.)

198 In the Circuit Court of the United States for the District of Oregon. April Term, 1884.

Be it remembered that on the 28th day of June, 1884, there was duly filed in the circuit court of the United States for the district of Oregon a complaint in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY & NAVIGATION COMPANY, Defendant. } No. 1035.

Complaint.

The plaintiff, for cause of action against the defendant, complains and alleges:

1. That at all the times hereinafter referred to the plaintiff was and it continues to be a corporation duly created and existing as such under and by virtue of the laws of Great Britain, and having its registered office at Dundee, in Scotland, and owning a railroad in the State of Oregon, and having duly complied with the laws of said State for the regulation of foreign corporations doing business therein.

2. That at all the times herein mentioned the defendant was and still is a corporation, duly incorporated under the general incorporation laws of the State of Oregon, having its principal place of business at Portland, in said State.

3. That on or about the first day of August, 1881, by indenture of lease of that date, the plaintiff, being thereto duly authorized by law, demised unto the defendant a certain railway or railroad, the same being the railroad owned by the plaintiff in the State of Ore-

gon as aforesaid, together with certain stations, depots, and other property connected therewith or belonging thereto, the property of the plaintiff, for a term of ninety-six years from the date thereof, and the defendant, being thereto duly authorized at law and the resolution of its board of directors, in consideration thereof, did, by the terms of said indenture, covenant and agree, among other things,

199 to pay to the plaintiff therefor the yearly rental of twenty-eight thousand pounds sterling money of Great Britain, in equal half-yearly payments, on the fifteenth day of May and the eleventh day of November in each year in advance.

4. That upon the execution of said indenture the said defendant entered into the possession of said demised property, and has continued in the enjoyment of the same to the present time, but, though requested thereto by the plaintiff, the defendant has neglected and refused to pay to the plaintiff the sum of fourteen thousand pounds sterling, the instalment of rent which as aforesaid became due under said indenture of lease on the fifteenth day of May, 1884, and the same and the whole thereof remains due and unpaid.

5. That the equivalent of said sum of fourteen thousand pounds sterling in lawful money of the United States is the sum of sixty-nine thousand three hundred dollars.

Wherefore plaintiff demands judgment against said defendant for the sum of sixty-nine thousand three hundred dollars, with legal interest thereon from the 16th day of May, 1884, and for its costs and disbursements in this action.

NORTHUP & GILBERT,
Attorneys for the Plaintiff.

UNITED STATES OF AMERICA, *District of Oregon*, } ss:

I, Hugh Roger, being first duly sworn, say I am the managing agent of the plaintiff above named within the State of Oregon, and that the foregoing complaint is true as I verily believe.

HUGH ROGER.

Subscribed and sworn to before me this 28th day of June, 1884.
W. B. GILBERT.

Filed June 28, 1884.

[SEAL.]

R. H. LAMSON, *Clerk*,
Notary Public for Oregon.

And afterwards, to wit, on the 28th day of June, 1884, there was issued out of said court a summons in words and figures as follows, to wit:

Summons.

In the Circuit Court of the United States for the Ninth Judicial Circuit, District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1035.

The President of the United States to The Oregon Railway and Navigation Company, the above-named defendant, Greeting:

You are hereby commanded to be and appear in the above-entitled court, holden at Portland, in said district, and answer the complaint filed against you in the above-entitled action within ten days from the date of the service of this summons upon you, if served within the county of Multnomah, in said district; or if served within any other county of said district, then within thirty days from the date of such service upon you; and if you fail to so
200 appear and answer, for want thereof the plaintiff will take judgment against you for the sum of sixty-nine thousand three hundred dollars and interest thereon from May 16, 1884, and its costs and disbursements in this action.

And this is to command you, the marshal of said district, or your deputy, to make due service and return of this summons. Hereof fail not.

Seal U. S. Circuit Court, Oregon.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, affixed at Portland, in said district, this 28th day of June, 1884.

R. H. LAMSON, *Clerk*,
By G. G. GAMMONS, *Deputy*.

DISTRICT OF OREGON, *ss:*

In obedience to the command of the within writ I have served the same on the therein-named The Oregon Railway and Navigation Company by exhibiting said writ to Theodore Wygant, secretary of said Oregon Railway and Navigation Company, and by delivering to said Theodore Wygant, secretary of said Oregon Railway and Navigation Company, personally, at Portland, in Multnomah county, in said district, on the 28th day of July, 1884, a true copy of said writ, duly certified to by me as U. S. marshal, together with a copy of the complaint in said action, duly certified to by the clerk of the within-entitled court.

EDWARD S. KEARNEY,
U. S. Marshal,
By JOSEPH SLOAN, *Deputy*.

Endorsed: Returned and filed June 30, 1884. R. H. Lamson, clerk, by G. G. Gammons, deputy.

And afterwards, to wit, on the 7th day of July, 1884, there was duly filed in said court a stipulation in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY.

It is hereby stipulated and agreed by and between the parties hereto that the defendant herein shall have until the 20th day of July, 1884, in which to appear and plead to the complaint herein filed.

W. B. GILBERT,
Of Attorneys for Plaintiff.
C. A. DOLPH,
Of Defendant's Attorneys.

Endorsed: Filed July 7, 1884. R. H. Lamson, clerk.

And afterwards, to wit, on the 19th day of July, 1884, there was duly filed in said court an answer in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

The defendant answers to the complaint that about the first day of August, 1881, the president and assistant secretary of the
201 defendant signed as for defendant an instrument in writing and affixed thereunto defendant's corporate seal, which instrument was in its terms such an indenture of lease as is described in the complaint, and is in fact the same instrument so described; but defendant denies that either plaintiff or defendant was at any time authorized by law to enter into said or any indenture of leasing, and defendant alleges that both the plaintiff and the defendant were without the power to enter into such contract; that the State of Oregon did not authorize or consent to such contract or leasing or to any leasing by the plaintiff or taking in lease by the defendant of the said railway, and the said pretended agreement was unauthorized and void.

That it is true defendant entered into the possession of the said railway and so continued under said pretended lease to the 15th day of May, 1884; but defendant denies that it had or was thereafter in the possession of the said property or is now in such possession, except as is herein now stated.

That on the said 15th day of May the defendant disavowed said pretended lease and disclaimed any obligation thereunder and offered to restore and tendered to the plaintiff the said railway property; that thereupon plaintiff requested defendant to continue in the possession of said road and operate the same to prevent losses which might otherwise result from suddenly discontinuing such operation upon the understanding that the act of defendant in so doing would in nowise be construed as imposing any obligation upon defendant to pay rent therefor or as implying any obligation to pay such rent; that upon such request and understanding and not otherwise defendant consented to retain such possession for a period of six months from said date, provided it could do so without loss to itself; that in pursuance of said agreement and understanding so had and in consideration of the same defendant has continued in possession of said road and has operated the same since said 15th day of May.

That by the terms of the said pretended lease there was to be paid to plaintiff by defendant £28,000 in semi-annual payments of £14,000 each in advance on the 15th days of November and May of each year.

That defendant fully paid the rental as provided for for the full period during which defendant held possession of said railway under said pretended lease, being for the period ending on the said 15th day of May, 1884, and it is not true that any sum of money became due on said date or is owing to plaintiff from defendant.

Wherefore defendant prays judgment for its costs and disbursements herein.

DOLPH, BELLINGER, MALLORY & SIMON,
Defendant's Attorneys.

STATE OF OREGON, }
County of Multnomah, } ss:

I, Theodore Wygant, being first duly sworn, say that I am secretary of The Oregon Railway and Navigation Company, defendant above named, and that the foregoing answer is true, as I verily believe.

THEODORE WYGANT.

Subscribed and sworn to before me this 19th day of July, 1884.

J. SILVERSTONE,
[SEAL.] *Notary Public in and for Oregon.*

Copy served July 19, 1884.

W. B. GILBERT,
Of Plaintiff's Attorneys.

Endorsed: Filed July 19th, 1884. R. H. Lamson, clerk.

202 And afterwards, to wit, on the 21st day of July, 1884, there was duly filed in said court a stipulation in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

It is agreed and stipulated by and between the parties hereto that the plaintiff shall have ten days from this to plead to the answer of the defendant.

July 21, 1884.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

Endorsed: Filed July 21, 1884. R. H. Lamson, clerk.

And afterwards, to wit, on Wednesday, the 30th day of July, 1884, the same being the 47th judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1035.

JULY 30, 1884.

Now, at this day, comes the defendant in the above-entitled cause, by Mr. Cyrus A. Dolph, of counsel, and, upon motion of said defendant, it is ordered that it be, and it hereby is, allowed to file an amended answer herein, which is now done.

And afterwards, to wit, on the 30th day of July, 1884, there was duly filed in said court an amended answer in words and figures as follows, to wit:

Amended Answer.

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

The defendant, by this its amended answer, by leave of the court filed, answers to the complaint:

That it admits that the plaintiff, at the times in the complaint referred to, was and continues to be a corporation under the laws of Great Britain, having its registered office at Dundee, in Scotland; but defendant denies that plaintiff was or is authorized or empow-

ered by its articles of incorporation or memorandum of association to construct or own the railway in the complaint mentioned or any railroad in the State of Oregon.

That about the first day of August, 1881, the president and assistant secretary of the defendant signed an instrument in writing and affixed thereto defendant's corporate seal, which instrument was in its terms such an indenture of lease as is described in the complaint, and is, in fact, the same instrument so described; but defendant denies that either plaintiff or defendant was at any time authorized by law to enter into said or any indenture of leasing; and defendant alleges that both the plaintiff and defendant were without the
*203 power to enter into such contract; that the State of Oregon did not authorize or consent to such contract of leasing by the plaintiff or taking in lease by the defendant of the said railway, and the said pretended agreement was unauthorized and void.

That it is true defendant entered into the possession of the said railway and so continued under the said pretended lease to the 15th day of May, 1884; but defendant denies that it had or was thereafter in the possession of the said property or is now in such possession, except as herein now stated.

That on the said 15th day of May the defendant disavowed said pretended lease and disclaimed any obligation thereunder and offered to restore and tendered to the plaintiff the said railway property; that thereupon plaintiff requested defendant to continue in the possession of said road and operate the same to prevent losses which might otherwise result from suddenly discontinuing such operation upon the understanding that the act of the defendant in so doing should in nowise be construed as imposing any obligation upon defendant to pay rent therefor or as implying any obligation to pay such rent; that upon such request and understanding and not otherwise defendant consented to retain such possession for a period of six months from said date, provided it could do so without loss to itself; that in pursuance of said agreement and understanding so had and in consideration of the same defendant has continued in possession of said road and has operated the same since said 15th day of May.

That by the terms of said pretended lease there was to be paid to plaintiff by defendant £28,000 in semi-annual payments of £14,000 each in advance on the 15th days of November and May of each year.

That defendant fully paid the rental so provided for for the full period during which defendant held possession of said railway under said pretended lease, being for the period ending on the said 15th day of May, 1884, and it is not true that any sum of money became due on said date or is owing to plaintiff from defendant. Wherefore defendant prays judgment for its costs and disbursements herein.

DOLPH, BELLINGER, MALLORY & SIMON,
Defendant's Attorneys.

STATE OF OREGON, }
County of Multnomah, } *ss:*

I, Theodore Wygant, being first duly sworn, say I am secretary of The Oregon Railway and Navigation Company, defendant above named; that I have read the foregoing amended answer, and believe the same to be true.

THEODORE WYGANT.

Subscribed and sworn to before me this 29th day of July, 1884.

W. T. HUME,
[SEAL.] *Notary Public in and for Oregon.*

Endorsed: Filed July 30, 1884. R. H. Lamson, clerk, by G. G. Gammons, deputy.

And afterwards, to wit, on the 31st day of July, 1884, there was duly filed in said court a stipulation in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff, }
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant. }

It is hereby stipulated by and between the parties hereto, by
204 their respective attorneys, that the plaintiff shall have ten days in which to reply or plead to the answer of the defendant filed herein.

Dated this 31st day of July, 1884.

W. B. GILBERT, *Of Attorneys for Plaintiff.*
DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

Endorsed: Filed July 31, 1884. R. H. Lamson, clerk, by G. G. Gammans, deputy.

And afterwards, to wit, on the 11th day of August, 1884, there was duly filed in said court a motion in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff, }
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant. }

Now, on this day, comes the plaintiff, by *his* attorneys, and most respectfully moves the court to allow the plaintiff herein until Sat-

urday, the 16th day of August, at 10 a. m., 1884, in which to file an amended complaint in this cause—

First. Setting forth and showing more specifically the foreign law under which plaintiff claims to be an incorporated body and the rights, privileges, and franchises acquired by plaintiff thereunder.

Second. By setting forth and showing the memorandum of association and the articles of association of plaintiff under said foreign law.

Third. By setting forth and duly showing compliance with said foreign law as to registration.

Fourth. By setting forth and showing defendants' articles of incorporation and their right to enter into the lease in the original complaint mentioned.

Fifth. By setting forth and pleading an offer of defendant to restore the possession of said demised property mentioned in the complaint and of plaintiff's refusal to accept surrender of said lease and property, and by pleading that said property as to value, good condition, repair, and equipment was not, at the time of said offer to restore possession, as when received by defendant and as contemplated by said leasing.

Sixth. By setting forth and showing a certain agreement, without prejudice to said leasing and plaintiff's rights thereunder, entered into between plaintiff and defendant, under which defendant continued to use and operate said demised property, and by showing said agreement to be without prejudice to the rights of both parties to and under said leasing, said agreement being dated May 15th, 1884.

Seventh. Lastly, by setting forth plaintiff's rights and powers to enter into the contract declared on both under the foreign law and the laws of this State and the United States.

J. W. WHALLEY,
Of Attorneys for Plaintiff.

And afterwards, on Monday, the 11th day of August, 1884, the same being the 52nd judicial day of the regular April term
205 of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1035.

AUGUST 11, 1884.

Now, at this day, comes the plaintiff in the above-entitled cause, by Mr. John W. Whalley, of counsel, and moves the court for leave to file an amended complaint so as to set forth the matters contained in the written motion now filed herein; and thereupon it is ordered that said motion be, and the same is hereby, allowed.

And afterwards, to wit, on the 15th day of August, 1884, there was duly filed in said court an amended complaint in words and figures as follows, to wit:

Amended Complaint.

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

The plaintiff, by this its amended complaint, complaining of the defendant, for cause of action alleges that at all the times hereinafter stated the plaintiff was and is a corporation created and existing as such under and by virtue of a certain act of Parliament of the United Kingdom of Great Britain and Ireland entitled "An act for the incorporation, regulation, and winding up of trading companies and other associations," 25 & 26 Vict., C. 89, and dated and passed 7th August, 1862, and of the acts amendatory thereof and supplementary thereto, and which act of Parliament is by said act authorized to be cited as "the companies act of 1862."

That under and by section six of said "the companies act of 1862" it is provided as follows: "Any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requisition of this act in respect of registration, form an incorporated company with or without limited liability."

That by section eight of said "the companies act of 1862" it is further provided that "where a company is formed on the principle of having the liability of its members limited to the amount unpaid on their shares, hereinafter referred to as a company limited by shares, the memorandum of association shall contain the following things (that is to say):

(1.) The name of the proposed company, with the addition of the word "limited" as the last word in such name.

(2.) That part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate.

(3.) The objects for which the proposed company is to be established.

(4.) A declaration that the liability of the members is limited.

206 (5.) The amount of capital with which the company proposes to be registered, divided into shares of a certain fixed amount.

Subject to the following regulations:

(1.) That no subscriber shall take less than one share.

(2.) That each subscriber of the memorandum of association shall write opposite to his name the number of shares he takes.

That under and by section nine of said "the companies act of 1862" it is further provided that "where a company is formed on the principle of having the liability of its members limited to such amount as the members respectively undertake to contribute to the assets of the company, in the event of the same being wound up, hereinafter referred to as a company limited by guarantee, the memorandum of association shall contain the following things (that is to say):

(1.) The name of the proposed company, with the addition of the word "limited" as the last word in such name.

(2.) The part of the United Kingdom, whether England, Scotland, or Ireland, in which the registered office of the company is proposed to be situate.

(3.) The objects for which the proposed company is to be established.

(4.) A declaration that each member undertakes to contribute to the assets of the company, in the event of the same being wound up during the time that he is a member or within one year afterwards, for payment of the debts and liabilities of the company contracted before the time at which he ceases to be a member, and of the costs, charges, and expenses of winding up the company, and for the adjustment of the rights of the contributors among themselves, such amount as may be required, not exceeding a specified amount.

That by section eleven of said "the companies act of 1862" it is further provided that the "memorandum of association shall bear the same stamp as if it were a deed, and shall be signed by each subscriber in the presence of and be attested by one witness at least, and that attestation shall be a sufficient attestation in Scotland as well as in England and Ireland. It shall, when registered, bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto and there were in the memorandum contained, on the part of himself, his heirs, executors, and adminstrators, a covenant to observe all the conditions of such memorandum, subject to the provisions of this act."

That by section fourteen of said "the companies act of 1862" it is further provided that the "memorandum of association may, in the case of a company limited by shares, and shall in the case of a company limited by guarantee or unlimited, be accompanied when registered by articles of association signed by the subscribers to the memorandum of association, and prescribing such regulations for the company as the subscribers to the memorandum of association deem expedient; the articles shall be expressed in separate paragraphs, numbered arithmetically; they may adopt all or any of the conditions contained in the table marked (A) in the first schedule hereto; they shall in the case of a company, whether limited by guarantee or unlimited, that has a capital divided into shares, state the amount of capital with which the company proposes to be registered, and in the case of a company, whether limited by guarantee or unlimited, that has not a capital divided into shares, state the number of members with which the company proposes to be registered, for the

purpose of enabling the registrar to determine the fees payable on registration."

207 In a company limited by guarantee or unlimited and having a capital divided into shares each subscriber shall take one share at the least and shall write opposite to his name in the memorandum of association the number of shares he takes.

That by section sixteen of said "the companies act of 1862" it is further provided that "the articles of association shall be printed; they shall bear the same stamp as if they were contained in a deed, and shall be signed by each subscriber in the presence of and be attested by one witness at the least, and such attestation shall be a sufficient attestation in Scotland, as well as in England and Ireland; when registered they shall bind the company and the members thereof to the same extent as if each member had subscribed his name and affixed his seal thereto and there were in such articles contained a covenant on the part of himself, his heirs, executors, and administrators, to conform to all the regulations contained in such articles, subject to the provisions of this act, and all moneys payable by any member to the company in pursuance of the conditions and regulations of the company or any of such conditions or regulations shall be deemed to be a debt due from such member to the company, and in England and Ireland to be in the nature of a specialty debt."

That by section seventeen of said "the companies act of 1862" it is further provided that "the memorandum of association and the articles of association, if any, shall be delivered to the registrar of joint-stock companies mentioned herein, who shall retain and register the same. There shall be paid to the registrar by a company having a capital divided into shares, in respect of the several matters mentioned in the table marked 'B' in the first schedule hereto, the several fees therein specified, or such smaller fees as the board of trade may from time to time direct, and by a company not having a capital divided into shares, in respect of the several matters mentioned in the table marked 'C' in the first schedule hereto, the several fees therein specified, or such smaller fees as the board of trade may from time to time direct. All fees paid to the said registrar in pursuance of this act shall be paid into the receipt of her majesty's exchequer and be carried to the account of the consolidated fund of the United Kingdom of Great Britain and Ireland."

That by section eighteen of said "the companies act of 1862" it is further provided that "upon the registration of the memorandum of association and of the articles of association, in the cases where articles of association are required by this act or by the desire of the parties to be registered, the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited. The subscribers of the memorandum of association, together with such other persons as may from time to time become members of the company, shall thereupon be a body corporate by the name contained in the memorandum of association, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, with

power to hold lands, but with such liability on the part of the members to contribute to the assets of the company in the event of the same being wound up as is hereinafter mentioned. A certificate of the incorporation of any company given by the registrar shall be conclusive evidence that all the requisitions of this act in respect of registration have been complied with."

And plaintiff alleges that on the 30th day of April, 1880, in pursuance of the provisions of law in the said the "companies act of 1862," hereinbefore mentioned, and of the other provisions of said act and of the acts supplementary thereto and amendatory thereof, a certain memorandum of association, entitled a memorandum of association of the Oregonian Railway Company, Limited, was made and entered into and duly executed by the following-named
208 persons, viz: Airlie, of Cortachy Castle, Kerriemuir, in the county of Forfar; William Lowson, of Dundee, in the county of Forfar, merchant; Thomas H. Cox, of Dundee, in the county of Forfar, merchant; John Long, of Kimbrae, Newport, in the county of Fife, newspaper proprietor; P. M. Cochrane, of Dundee, in the county of Forfar, merchant; Alex. Henderson, of Dundee, in the county of Forfar, merchant; Alex. Nicoll, of Dundee, in the county of Forfar, merchant; James Stevenson, of Dundee, in the county of Forfar, dyer; John M. Watson, of Dundee, in the county of Forfar, stock broker; Wm. M. McKenzie, of Dundee, in the county of Forfar, stock broker; which memorandum of association is in the words and figures to the effect following—that is to say:

209 "*The Companies Acts*—1862, 1867, *and* 1877."

Company limited by shares.

Memorandum of Association of the Oregonian Railway Company, Limited.

1. The name of the company is the "Oregonian Railway Company, Limited."

2. The registered office of the company will be situate in Scotland.

3. The objects for which the company is established are—

First. The building, constructing, reconstructing, diverting, equipping, owning, operating, leasing, or selling, transferring or disposing of, or purchasing or otherwise acquiring, holding, and operating, or otherwise using, working, or dealing in all or any such railway or railways, railroad or railroads, in the State of Oregon and the Territory of Washington, in the United States of America, or in either of them, or between such points in said State or Territory, or elsewhere in North America, as may from time to time be resolved or determined upon by said company, and the carrying of passenger, goods, and mineral, and all other traffic and freight on and the doing and performing of all other acts, deeds, and other operations connected with railways and railroads in the said State and Territory or either of them or elsewhere in North America.

Second. The building, constructing, equipping, owning, and operating, or the leasing, selling, transferring, holding, or acquiring, by purchase or otherwise, and the working and using of one or more lines or portions of lines of railroad or railway or parts thereof from (first) the city of Portland or the city of Astoria, in the State of Oregon, United States of America, or from either or both of said cities, or from some other point or place on the Willamette or Columbia rivers, in said State of Oregon, through any part or portion of the said State of Oregon lying west or south of the Cascade range of mountains, in said State, to some point at or near, in or upon, said Cascade range of mountains; (second) from thence or from any part or portion of the western or southwestern part of said State of Oregon to and across and to the east side of said Cascade range of mountains, through a pass in said mountains at or near that fork or branch of the Willamette river, in said State of Oregon, known as the Middle fork or branch of said river, or through some other pass in said mountains within one hundred miles north or south of said Middle fork or branch of said river where shall — found to be, on actual survey, the easiest and most practical route across the Cascade range of mountains; (third) thence through
210 that portion of said State of Oregon lying east of said Cascade range of mountains and on through the Territories of Washington or Idaho, or the States of Nevada and California, in the United States of America, or through all or any one or more of said States or Territories, to a connection with or without making any connection with any other railway or railways in either of said States of Oregon, California, or Nevada or Territories of Washington or Idaho, and with or without one or more branch lines (*a*) running north, south, east, or west from said main line on the east side of said Cascade range of mountains, or (*b*) running from said main line on the west side of said Cascade range, in said State of Oregon, forming a junction or one or more junctions with said main line at one or more points to a terminus in said portion of the State of Oregon west of said Cascade range of mountains, or to a junction with said main line, or to a terminus or termini at one or more seaports on the shores of the Pacific Ocean, all as may from time to time be determined by actual surveys; as also to purchase, build, construct, own, equip, and operate, or to enter into agreements to run over, or to lease (1) any line or lines, branch or branches, of railway or railways, railroad or railroads, that may connect with or become attached to or meet or become part of the said main line or its main branch or any of its branches hereinbefore designated, or (2) such other main or branch line or lines or extensions of any railway or railways, railroad or railroads, made in connection with this company's main line or of any of its branches or separate and distinct therefrom, all in such manner of way or form and on such terms as this said company shall from time to time deem advisable and for its interests, and the doing and performing of all other operations connected with said designated railway or railways, railroad or railroads, or branches thereof, or in connection with other railways of a similar or different nature, the doing and performing of which this said company

shall at any time deem advisable and for its interest in the carrying on of its business.

Third. The building, constructing, purchasing, or otherwise acquiring, holding, equipping, owning, and operating, or the leasing and operating, or the leasing, equipping, and operating, or the selling, transferring, or otherwise disposing of and the working and using of any other railway or railroad, or of any wharves, jetties, steamboat or steamship, stage, or of any canals, locks, bridges, clay road, plank road, turnpike, hack, truck, or express lines, or any other line, lines, or means for the transportation of freight or passengers, or either or both, now constructed or operated in whole or in part or which may be hereafter constructed or operated in whole or in part in either of the said States of Oregon, California, or Nevada or said Territories of Washington or Idaho, and that whether in connection with or separate and distinct from and as a line or means independent of said railway or railways, railroad or railroads, so to be built, constructed, purchased, owned, equipped, or operated as aforesaid by this company.

Fourth. The entering into agreements for and the taking, holding, or the guaranteeing of bonds, shares, debentures, dividends, or mortgages and other indebtedness of any other railway or railroad company or companies, or of any canals, locks, bridges, clay road, plank road, turnpike, steamboat, steamship, stage, express, or telegraph companies in the United States of America or Dominion of Canada.

Fifth. The entering into agreements with any person, persons, firm, copartnership, company, or corporation that may be the owners and operators or the operators of any railway, railroad, steamboat, steamship, express, hack, truck, or stage line or lines, canals, locks, bridges, clay road, plank road, turnpike, or any other means of transporting freight or passengers, or either or both, and who may be
211 in any manner or form engaged in the business or occupation of common carriers or the transportation of freight and passengers, or either or both, for the prorating in fares and freights, or either or both, or for the joint use, occupation, and enjoyment of their several lines or the branches thereof, or of any or all other property, both real, personal, or both, owned or used by them or either of them respectively, or for the operating their respective lines on joint purse, or in any other manner and form for the mutual or joint or the mutual and joint transportation of freight and passengers, or either or both, over their respective lines of transportation.

Sixth. The building, constructing, equipping, owning, operating, leasing, selling, transferring, or otherwise disposing of, purchasing, or otherwise acquiring, holding, and operating, or otherwise using, working, or dealing in any telegraph or telephone line or lines, or any warehouse or warehouses, or building or buildings for receiving or storing grain or other produce in any manner connected with or unconnected with or requisite, necessary, or convenient for the operation of the main or any branch line of railway, railroad, or of any other means, manner, or line of transportation, constructed,

built, leased, or in any manner operated by or in connection with this company in any manner or form whatsoever.

Seventh. The acquiring, by purchase or otherwise or by donations or gifts, of such real and personal property as this company may find requisite, necessary, or convenient for carrying into effect fully and completely the objects of the company and the transaction of its business, and to hold and dispose of the same at the pleasure of this company, and the acquiring, holding, leasing, transferring, and otherwise using and disposing of any real or personal property of whatever nature or of any rights and privileges acquired or which from time to time — be acquired by the company or which may be given, granted, or conveyed to it for the purpose of aiding it in the construction and operation of its aforesaid line or lines of railway or branches thereof or extensions therefrom or for any or different purpose whatsoever; as also the acquiring, under the laws of the States of Oregon, Nevada, or California, or the Territories of Washington and Idaho, or any other States or Territories in the United States, under the laws of the United States, or under the laws of the Dominion or of any Province of Canada, or under the laws of any one or more or all of them, of such real or personal property or the right to the use or occupation of the same by appropriation or otherwise in such manner as is now or may hereafter and from time to time be provided by the laws of either of the said States or Territories in the United States or by the laws of the United States or by the laws of the Dominion or of any Province of Canada, or either one or more or of all of them.

Eighth. The borrowing of money in the United States of America or in the United Kingdom of Great Britain and Ireland or in Europe or elsewhere on or on the security (first) of bonds of promissory notes or debentures or other deeds or obligations of the company; or (second) of bonds or promissory notes or other deeds or obligations of the company, containing also or separately secured by mortgage or trust deed of all or any portion of the company's property and assets, real or personal, or on all or any portion of its property and assets, real or personal, and of or on all or any of its franchises, powers, and privileges; or (third) of bonds or mortgage debentures, as also the raising of and procuring money by the creation and issue of preference shares, or by the creation and issue of guaranteed shares, or by any other means or in any other manner or form which the company at any time deem advisable.

Ninth. The amalgamating or otherwise uniting the company with any other railway, railroad, steamboat, steamship, canal, lock,
212 bridge, stage, hack, truck, express, or telegraph or telephone company, or any other company or institution engaged in the business of the transportation of freight or passengers or both whose objects shall be wholly or partially similar to those of this company or absorbing any such other company or institution or purchasing or acquiring its business on any terms and in any manner.

Tenth. The carrying on of the business of common carriers and the fixing and exaction of tolls and freights and the transacting and

doing of all such other matters and things as the company shall from time to time consider conducive or incidental to the above objects or any of them; but the company shall not do anything whereby the limitation of the liability of its members shall be prejudiced; and,

Lastly, the doing whatever else may be from time to time sanctioned by a special resolution of the company.

4. The liability of the members is limited.

5. The capital of the company is one hundred and sixty thousand pounds, divided into sixteen thousand shares of ten pounds each.

We, the several persons whose names and addresses are subscribed, are desirous of being formed into a company in pursuance of this memorandum of association, and we respectfully agree to take the number of shares in the capital of the company set opposite our respective names.

Dated this thirteenth day of April, eighteen hundred and eighty years.

Names, addresses, and description of subscribers.	Number of shares taken by each subscriber.
Airlie, of Cortachy Castle, Kirriemuir, in the county of Forfar	100
William Lawson, of Dundee, in the county of Forfar, merchant	100
Thomas H. Cox, of Dundee, in the county of Forfar, merchant	100
John Leng, of Kimbrae, Newport, in the county of Fife, newspaper proprietor	100
P. M. Cochrane, of Dundee, in the county of Forfar, merchant	100
Alex. Henderson, of Dundee, in the county of Forfar, merchant	100
Alex'r Nicoll, of Dundee, in the county of Forfar, merchant	100
James Stevenson, of Dundee, in the county of Forfar, dyer	100
John M. Watson, of Dundee, in the county of Forfar, stockbroker	100
William Mackenzie, of Dundee, in the county of Forfar, stockbroker	50
Total shares taken	950

Witness to the above signatures:

WM. ARTHUR BELL,
Apprentice to Messrs. Pattulo & Thornton,
Solicitors, 1 Bank Street, Dundee.

That on the said 30th day of April, 1880, in pursuance of the provisions of law in the said "the companies act of 1862," hereinbefore mentioned, and of the other provisions of the acts supplementary thereto and amendatory thereof, and contemporaneously with the execution of the memorandum of association aforesaid, the said Airlie, of Cortachy Castle, Kerriemuir, in the county of Forfar; William Lowson, of Dundee, in the county of Forfar, merchant; Thomas H. Cox, of Dundee, in the county of Forfar, merchant; John Leng, of Kimbrae, Newport, in the county of Fife, newspaper proprietor;

P. M. Cochrane, of Dundee, in the county of Forfar, merchant; Alex. Henderson, of Dundee, in the county of Forfar, merchant;
213 Alex. R. Nicoll, of Dundee, in the county of Forfar, merchant; James Stevenson, of Dundee, in the county of Forfar, dyer; John M. Watson, of Dundee, in the county of Forfar, stockbroker; William McKenzie, of Dundee, in the county of Forfar, stockbroker, did enter into and make and duly execute articles of association, as required by said acts, and thereupon did, on the said 30th day of April, 1880, duly deliver them to the registrar of joint-stock companies, as required by section seventeen of said "the companies act of 1862," who thereupon did duly retain and register the said memorandum and articles of association, and did duly thereupon certify under his hand the said "The Oregonian Railway Company, Limited," to be incorporated and said company to be limited, which articles of association are in the words and figures and to the effect following—that is to say:

214 *Articles of Association of the Oregonian Railway Company, Limited.*

1. The regulations of table A in the first schedule to "the companies act, 1862," shall not apply to this company, except so far as the same are repeated or contained in these articles.

Capital.

2. The original capital shall be £160,000, divided into 16,000 shares of £10 each, which, so far as not subscribed for in the memorandum and articles of association, may be allotted and issued to such persons as the directors may consider proper.

3. The registered holders of shares in the company for the time being, whatever the number issued or subscribed, shall be and continue associated, and the business of the company may be at once commenced, and the regulations for the management of the company shall be in force. Every person to whom any share or shares shall have been allotted in consequence of any application from him shall be deemed to be a member of the company, along with all subscribing members, and shall be entered as a member upon the register of members.

4. The company may, by the resolution of a general meeting, increase its capital beyond the amount mentioned in the memorandum of association by the creation of new shares of such amounts per share and in the aggregate and on such terms as such resolution shall direct; and any new capital so created may carry such preferential right to dividend or such priority in the distribution of assets or be subject to such postponement of dividends or in the distribution of assets as any resolution of a general meeting passed previously to its issue shall direct; but, save as aforesaid, all new capital shall be subject to the same provisions in all respects as if it had been part of the ordinary capital mentioned in the memorandum of association.

5. The shares or any class of shares may from time to time be consolidated into a smaller number of shares or divided into a larger number of shares or the capital may be reduced by such resolutions and proceedings as the law requires.

Shares.

6. If several persons are registered as joint holders of any share, any one of such persons may give effectual receipts for any dividend payable in respect of such share or for any interest on prepaid calls.

7. Every member shall be entitled to a certificate, under the common seal of the company, specifying the share or shares held by him and the amount paid up or deemed to be paid up thereon; 215 and if such certificate be worn out or lost it may be renewed on payment of five shillings or such less sum as the directors may prescribe.

8. The company shall not be bound by or recognize, even though having notice thereof, any other right in respect of a share than an absolute right thereto in the registered holder thereof for the time being, and such right in case of transmission as hereinafter mentioned.

Transfer of shares.

9. The instrument of transfer of any share in the company shall be executed both by the transferrer and the transferee, and the transferrer shall be deemed to remain the holder of such share until the name of the transferee is entered in the register book in respect thereof.

10. All transfers of shares of the company shall be valid and effectual if executed according to the usual mode of executing such instruments by the law of Scotland or by the law of England or partly according to the one and partly according to the other.

11. The directors may decline to register any transfer of shares made by a member who is indebted to the company or to any person not approved by them.

12. Every deed of transfer must be left at the office of the company to be registered, accompanied with such evidence as the directors may reasonably require to prove the title of the transferrer and with the payment of such fee as the directors shall from time to time determine, and thereupon the company, subject to the powers vested in the directors by the immediately preceding article, shall register the transferee as a shareholder and retain the deed of transfer.

13. In no case shall the directors be bound to enquire into the validity, authority, legal effect, or genuineness of any deed of transfer produced by a person claiming as a transferee of any share in accordance with these articles, and, whether they abstain from so enquiring or do so enquire and are misled, the transferrer shall have no claim whatsoever upon the company in respect of the share, except for the dividends previously declared in respect thereof, but only, if at all, upon the transferee.

14. The transfer books may be closed during the fourteen days

immediately preceding any general meeting or any issue of new shares.

Transmission of shares.

15. The executors or administrators of a deceased member shall be the only persons recognized by the company as having any title to his shares.

16. Any person becoming entitled to a share in consequence of the death or bankruptcy of any member or in consequence of the marriage of any female member may, upon such evidence being produced as may from time to time be required by the directors, either be registered himself as a member or execute a transfer of the share to his nominee, subject to the approval of said nominee by the directors.

Calls on shares.

17. The directors may from time to time make such calls upon the members in respect of all moneys unpaid on their shares as they may think fit, provided that four weeks' notice at least is given of each call.

18. Each member shall be liable to pay the amount of calls so made to the persons and at the times and places appointed by the directors, and in case of default to pay interest for the same
216 at the rate of £10 per cent. per annum from the day appointed for payment thereof to the time of the actual payment, and joint holders of shares shall be so liable severally as well as jointly in respect of all calls thereon.

19. The directors may, if they think fit, receive from any member willing to advance the same all or any part of the moneys payable upon the shares held by him beyond the sums actually called up, and the moneys so paid in advance or so much thereof as shall from time to time exceed the amount of the calls then made upon the shares in respect of which such advance shall have been made may, as the directors and the members paying the same may agree, be treated either as payments in advance in respect of such shares, entitling the holders thereof for the time being to dividends at the same rates as if such moneys had been paid up in pursuance of calls, or as loans at such interest and on such terms as the members paying such sums in advance and the directors shall agree upon.

Lien on shares.

20. The company shall have a first charge or paramount lien on all shares for all moneys due to it from the holder or any of the joint holders thereof, either alone or jointly with any other person, including all calls the resolution for which shall have been passed by the directors, although the times appointed for their payment may not have arrived.

21. Such lien may be made available by a sale of all or any of the shares subject to it, provided that no such sale shall be made except under a resolution of the directors and until notice in writing shall have been given to the indebted member or his executors or admin-

istrators requiring him or them to pay the amount for the time being due to the company, and default shall have been made for twenty-eight days from such notice in paying the sums thereby required to be paid.

22. In case of such sale the directors shall apply the clear proceeds, after the payment of any expenses, in or towards satisfaction of such debt, and the residue, if any, shall be paid to the late member, his executors, administrators, or assigns.

Forfeiture of shares.

23. If any member fails to pay any call on the day appointed for payment thereof, the directors may at any time thereafter, during such time as the call shall remain unpaid, serve a notice on him requiring him to pay such call, together with the interest and any expenses that may have accrued by reason of such non-payment.

24. The notice shall name a further day, not less than fourteen days after the day first appointed, on or before which such call and all interest and expenses accrued by reason of such non-payment are to be paid. It shall also name the place where payment is to be made, the place so named being either the registered office of the company or some other place at which the calls of the company are usually made payable. The notice also shall state that in the event of non-payment at or before the time and at the place appointed the shares in respect of which such call was made will be liable to be forfeited.

25. If the requisitions of any such notice as aforesaid be not complied with, any share in respect of which such notice shall have been given may at any time thereafter, before payment of any calls, interest, and expenses due in respect thereof shall have been made, be forfeited by a resolution of the directors to that effect.

26. If any such person as mentioned in article 16 shall not, during three months after being thereto required by notice from the
217 directors, be registered or cause a nominee to be registered under that article, or if, for six months after the death or bankruptcy of a member or marriage of a female member, no person shall be registered in respect of his or her shares under article 16, the shares may be forfeited by a resolution of the directors to that effect, together with all dividends declared thereon since the death, bankruptcy, or marriage of the late member.

27. Any forfeited share shall be deemed to be the property of the company and may be resold, re-allotted, or disposed of in such manner as the directors shall think fit.

28. Any member whose shares have been forfeited shall notwithstanding be liable to pay to the company all calls owing upon such shares at the time of forfeiture and the interest thereon.

29. A certificate in writing, under the seal of the company and the hands of two directors and countersigned by the secretary, that a share has been duly forfeited in pursuance of the regulations of the company or sold under article 21 shall be conclusive evidence of such forfeiture or sale, and also in favor of the purchaser of its

regularity and validity, so that the remedy of any person aggrieved shall be against the company and in damages only, and an entry of every such certificate shall be made in the minutes of the proceedings of the directors.

30. On any sale by the directors of forfeited shares or of shares sold under article 21 the purchaser shall be registered as the proprietor of the shares, and shall receive a certificate of such proprietorship under article 7, and shall hold the shares discharged from all calls due prior to his purchase, and he shall not be bound to see to the application of the purchase-money.

31. The directors may in their discretion remit or annul the forfeiture of any share within one year from the date thereof upon payment of all monies due to the company from the late holder or holders of such share or shares and all expenses incurred in relation to such forfeiture.

Share warrants.

32. The company may issue share warrants in respect of paid-up shares. Subject to the provisions of these articles and of the companies act, 1867, the bearer of a share warrant shall be deemed to be a member of the company to the full extent.

33. The stamp duty on every share warrant and all other expenses of or incident to its issue shall be borne by the person applying for it.

34. In the case of the loss of any share warrant a new one may be issued to the person claiming in respect of it, or such person may be entered in the register of members, but only on his producing such evidence of his title and of the loss of his warrant as the directors shall consider satisfactory and on his giving to the company such indemnity, with or without security, as the directors shall require.

General meetings.

35. The first ordinary general meeting shall be held at such time within four months after the incorporation of the company as the directors may determine, and thereafter an ordinary general meeting shall be held annually at such time and place as the directors may annually determine.

36. The directors may, whenever they think fit, and they shall, upon a requisition made in writing by four or more members of the company holding in the aggregate shares to the nominal amount of one-tenth of the issued capital for time being of the company, convene an extraordinary general meeting.

218 37. Any requisition made by the members shall express the object of the meeting proposed to be called, and shall be left at the registered office of the company, but no member shall be qualified to sign a requisition who shall be under the disabilities mentioned in article 51 and article 52 or any of them.

38. Upon the receipt of such requisition the directors shall forthwith proceed to convene an extraordinary general meeting. If they do not proceed to convene the same within fourteen days from the

date of the requisition, the requisitionists or any other four or more members holding the required amount of shares may themselves convene an extraordinary general meeting.

39. The directors or members convening any meeting shall give seven days' notice at least, specifying the place, the day, and the hour of meeting, and in case of special business the general nature of such business, to the members in manner hereinafter mentioned or in such other manner, if any, as may be prescribed by the company in general meeting; but the non-receipt of such notice shall not invalidate the proceedings at any general meeting.

40. All business shall be deemed special that is transacted at an extraordinary meeting as well as all business that is transacted at an ordinary meeting, with the exception of choosing a chairman (if necessary), sanctioning a dividend, electing directors and officers, considering the accounts and the report of the directors, and passing any resolution relating to or arising out of the subject-matter of such report.

Proceedings at general meetings.

41. No business shall be transacted at any general meeting, except the choice of a chairman (if necessary) and the declaration of a dividend, unless four members shall be present in person or by proxy at the time when the meeting proceeds to such business.

42. If within half an hour from the time appointed for the meeting a quorum (as defined by the clause immediately preceding) be not present the meeting, if convened upon the requisition of members, shall be dissolved. In any other case it shall stand adjourned to the same day in the next week, at the same time and place, and if at such adjourned meeting a quorum be not present it shall be adjourned *sine die*.

43. The chairman (if any) of the board of directors shall preside as chairman at every general meeting of the company.

44. If there is no such chairman, or if at any meeting he is not present within fifteen minutes after the time appointed for holding the meeting, the directors present shall choose one of their own number to act as chairman and, that failing, the members present and entitled to vote shall appoint some one of their own number to be chairman.

45. The chairman may, with the consent of the meeting, adjourn any meeting from time to time and from place to place, but no business shall be transacted at any adjourned meeting other than the business left unfinished at the meeting from which the adjournment took place.

46. At any general meeting, unless a poll is demanded by at least three of the members present in person or by proxy and entitled to vote, a declaration by the chairman that a resolution has been carried, and an entry to that effect in the book of proceedings of the company, shall be sufficient evidence of the fact without proof of the number or proportion of votes recorded in favor or against such resolution.

219 47. If a poll is demanded by three or more members present in person or by proxy and entitled to vote it shall be taken in such manner as the chairman directs, and the result of such poll as declared by the chairman shall be deemed to be the resolution of the company in general meeting.

48. Minutes shall be made in books provided for the purpose of all resolutions and proceedings of general meetings, and any such minutes, if signed by any person purporting to be chairman of the meeting to which they relate or by any other person present thereat and appointed by the board of directors to sign the same in his place, shall be receivable as evidence of the facts therein stated without further proof; but if such minutes be signed otherwise than by the chairman of the meeting to which they relate they shall be read to the next succeeding meeting, and on being found or made correct shall be signed by the chairman thereof.

Votes of members.

49. Every member shall have one vote for every share held by him, and in case of an equality of votes at any general meeting or poll the chairman shall, in addition to the votes to which he otherwise may be entitled, have another or casting vote.

50. If two or more persons are jointly entitled to a share or shares the member whose name stands first on the register of members as one of the holders of such share or shares and no other shall be entitled to vote in respect of the same.

51. If any member is an infant, pupil, minor, married woman, lunatic, or person of unsound mind he or she may vote by his or her guardian, tutor, husband, committee, or legal curator or by any one of them, if more than one, such person having previously furnished to the directors such evidence as they shall require of his title to represent such member.

52. No member shall be entitled to vote at any general meeting unless all calls due from him have been paid, and no member shall be entitled to vote in respect of any share that he has acquired by transfer at any meeting held after the expiration of four months from the registration of the company unless he has been possessed of the share in respect of which he claims to vote for at least three months previously to the time of holding the meeting at which he proposes to vote.

53. Votes may be given either personally or by proxy. No person shall be appointed a proxy who is not a member of the company.

54. The instrument appointing a proxy shall be deposited at the registered office of the company not less than three clear days before the time for holding any meeting at which the person named in such instrument proposes to vote. Proxies may either be for one meeting or generally for all meetings.

55. The instrument appointing a proxy shall be signed by the party making such appointment and be in the following form, with such variation as circumstances may require:

"The Oregonian Railway Company, Limited.

"I, —— ——, of ——, in the county of ——, being a member of the Oregonian Railway Company, Limited, hereby appoint —— —— as my proxy to vote for me and on my behalf at (the or all ordinary or extraordinary, as the case may be) general meeting (or meetings, as the case may be) of the company to be held on
220 the — day of —— and at any adjournment thereof (or to be held at any time hereafter, as the case may be).

"As witness my hand this — day of ——, 18—.

"—— ——."

Directors and adoption of agreements.

56. Every member holding not less than two hundred shares of the company upon which all calls for the time being shall have been paid shall be eligible as a director.

57. The number of directors shall not be less than three or more than six, but this clause shall be construed as being only directory, and the continuing directors may act, notwithstanding any number of vacancies.

58. The first directors shall be the Right Hon'ble the Earl of Airlie, K. T., Cortachy Castle, near Kirriemuir; William Lowson, Esq., of Balthayock, merchant, Dundee; Thomas Hunter Cox, Esq., of Duncarse and Maulesden, merchant, Dundee; John Leng, Esq., of Kimbrae, Newport, Fife, and Peter Moir Cochrane, merchant, Dundee, who shall act until the annual ordinary meeting in the year of 1881.

59. The remuneration of the directors shall for each of the first four years after the registration of the company be equal to three-fourths per cent. on the capital of the company, and thereafter shall be such sum per annum as the members may vote at the first annual meeting after the expiration of the said four years. The said remuneration shall be divided between the directors in such proportions as they may determine: Provided always, that the members may at any ordinary meeting resolve that the sum then fixed by them for the remuneration of the directors shall thenceforth be annually appropriated for such remuneration until otherwise altered by a subsequent resolution of the members at some ordinary meeting, and so on from time to time.

60. If any director shall be called upon to perform extra services or to make exertions in going or residing abroad on the company's business, the board may arrange with such director for such special remuneration for such services or exertions either by way of salary, commission, or the payment of a lump sum of money, as they shall think fit.

61. An agreement has been entered into by or on behalf of the directors for the acquisition of the Dayton, Sheridan and Grand Ronde railway, and a contract has been made by or on behalf of the directors for the construction of 60 miles of new railway. The dates and names of the parties to said contracts or agreements are as follows: (1) Agreement (for the acquisition aforesaid) between

William Lowson, Esq., of Balthayock, merchant in Dundee, in the county of Forfar, in Scotland, and Peter Moir Cochrane, merchant in Dundee, in said county, for themselves and for all other parties who they may have admitted or may admit into the premises, of the first part, and the Oregon Railway Company, Limited (of Oregon), of the second part, dated 4th March and 1st April, 1880; and (2) contract (for the construction aforesaid) constituted as follows: (*a*) letter or offer by James B. Montgomery for J. B. Montgomery & Co., contractors, Portland, Oregon, dated March 6, 1880, and addressed to the Right Hon'ble the Earl of Airlie, K. T., and Messrs. William Lowson, Thomas H. Cox, John Leng, and P. M. Cochrane, and (*b*) minute of meeting of the provisional committee of the "Oregon Railroad Company, Limited," meaning by that the proposed company, at which meeting were present the said Thomas H. Cox, John Leng, P. M. Cochrane, and William Lowson, and also the said James B. Montgomery, who signed the said minute, dated 8th
221 March, 1880. It is hereby provided that the said contracts or agreements are adopted and shall be adopted and carried out by the company. Further, and as the said agreement for the acquisition aforesaid was negotiated by the said William Lowson, Thomas Hunter Cox, John Leng, and Peter Moir Cochrane at their own risk, and they have also incurred considerable personal trouble and responsibility, and as the bargain is considered highly advantageous, it is hereby provided that if within four years from the date of registration of the company it shall be found that the said purchased railway does not cost the company for original purchase price and improvement and equipment more than two-thirds the rate per mile of the portion of railway contracted to be constructed, and if on the average over the said period there shall have been earned by the company net profits equal to not less than 10 per cent. per annum, the said above-named parties shall receive twenty-five per cent. of the gain to the company from the said purchase.

Powers of directors.

62. The business of the company shall be managed by the directors.

63. Subject to the restrictions herein contained, and in addition to all other powers herein contained, the directors shall have power to do the following things in the name and on behalf of the company:

[*a*] To carry out and to carry into effect, with all the powers of the company itself, all or any of the objects and powers of the company as expressed in the memorandum of association, as also and without prejudice to said generality.

[*b*] To raise or defend any action, petition, or other legal proceedings, and to abandon, compromise, and settle the same, when and upon such terms as they may deem expedient.

[*c*] To purchase, or acquire, or feu, or lease any property and effects, whether heritable or movable, real or personal, which they may deem requisite for the purposes of the company, and

that either absolutely or perpetually or for any term of years and upon such terms and subject to such ground rents, feu duties, rents, or other charges as they may deem expedient, and also to acquire the right of use of any such property and effects, heritable or movable, real or personal, as aforesaid.

[*d*] To erect any houses or buildings or alter, renew, repair, or improve any houses or buildings, whether erected by the company or not, as they may think desirable or proper for the advantage of the company.

[*e*] To purchase or acquire the good will and personal property of any kind whatsoever and the credits and effects of any other person or persons or company carrying on a like business, or to amalgamate with this company any such person or company upon such terms and conditions as they may think fit.

[*f*] To sell, feu, exchange, sub-let, or otherwise dispose of the company's property, whether heritable or movable, real or personal, or any part thereof, upon any terms they may think fit.

[*g*] To insure against risk by fire or other risk any building or property of the company.

[*h*] To execute and sign and issue in the name of the company all deeds of security and other deeds and all receipts and other documents and writings they may think necessary, and for that purpose to use the company's seal.

222 [*i*] To engage all superintendents, secretaries, treasurers, accountants, solicitors, managers, agents, correspondents, clerks, and servants of the company, and also to discharge the same.

[*j*] To refer disputes to arbitration and to compromise any debt or claim due to or by the company.

[*k*] To give time to any debtor for the payment of his debt.

[*l*] To take the heritable or movable, real or personal property of any debtor or his equitable interest in any property as a security for the payment or in satisfaction or part satisfaction of any debt due by him to the company.

[*m*] To draw, accept, make, renew, and endorse any bill of exchange or promissory note that may be deemed necessary for the purposes or the business of the company.

[*n*] To enter into any contracts with such persons as they shall think fit, whether such person shall be members or directors or the partners or partner of a member or director of the company or not; and every member or director with whom any such contract may be entered into shall be entitled to the profit and benefit thereof to the same extent as though he were not a member or director of the company.

[*o*] To accept any conveyance or lease of any property or buildings from any person or persons, whether such person or persons shall be a member or members or director or directors or other officers of the company or his or their partner or partners, and such person shall be entitled to the profit and benefit thereof to the same extent as though he were not a member, director, or officer of the company.

[*p*] To open a banking account in the name of the company; and every sum paid on behalf of the company which shall amount to the sum of £20 and upwards shall be paid by cheque on the bankers of the company, such cheque to be signed by any two directors.

[*q*] To provide a common seal, to be kept by such person and in such manner as the directors may think fit.

64. The directors may also establish offices, agencies, or local boards in any of the States or countries in which by the memorandum of association they are entitled to do or hold anything, and may make such regulations for the management of such offices; agencies, or local boards as they may from time to time think proper, and for that purpose they may appoint local boards, consisting of such persons and possessing such powers and holding such qualifications as the directors shall from time to time determine; and, farther, the directors may appoint in the United Kingdom, as well as in any of the said States and countries, managers, agents, secretaries, treasurers, officers, clerks, and servants, with such remuneration and at such salaries as they may consider advisable, and may pay the expenses occasioned thereby out of the funds of the company, and may from time to time discontinue all or any branch offices, agencies, or local boards, and may remove or suspend at any moment all or any of the members of any local board and all or any of the managers, agents, secretaries, treasurers, officers, clerks, or servants of the company for such reasons as they may think proper and advisable and without assigning any cause.

65. The directors may from time to time appoint a president of the company, and also a vice-president, who, in the absence of the president, may act in the president's name and place as presi-
223 dent of the company. All deeds, powers of attorney, instruments, and other documents requiring, according to the law of any State, country, province, or dominion, to be subscribed or executed on behalf of the company by the president of the company alone or in conjunction with the secretary of the company, may be so subscribed and executed on behalf of and so as to bind the company by the president or vice-president appointed as aforesaid, and by the secretary of the company, where his subscription is also necessary.

66. The directors shall have the power to make temporary investment of the company's funds in the United Kingdom or in any colony of her majesty or in any foreign State or country, and that in such way or upon such stocks, shares, bonds, debentures, or securities as they may from time to time approve, and they may from time to time realize such temporary investments and invest of new in whole or in part.

67. The directors may from time to time borrow for the purposes of the company such sum or sums of money as they may from time to time think proper, and they — make and issue for any money borrowed such bonds, deeds of security, and other deeds, vouchers, documents, shares, acts, matters, and things as are authorized by the

memorandum of association of the company and as they from time to time consider proper.

68. Money may be borrowed for the purposes of the company with a stipulation, if approved by a general meeting, that the security may be converted into preference or other shares or stock of the company.

69. In the event of any moneys being borrowed for the purpose of the company on the terms of the securities for such moneys being convertible into shares, the directors may create and issue such new shares, either preferential, ordinary, or deferred, as may be necessary for carrying such conversion into effect.

70. The directors shall have power, by the signature of the managing director or secretary, with the counter-signature of one of their number, to draw, accept, make, or endorse bills of exchange, drafts, promissory notes, and cheques, and to grant receipts for money borrowed on behalf and for the purposes of the company; but for the purpose of granting interim receipts for money received to be lent on mortgage or bond of the company and of authenticating notices or reports, allotment letters, coupons, or interest or dividend warrants, the signature of the managing director or secretary alone shall be sufficient on his being from time to time authorized by the directors accordingly.

71. The directors shall have power to appoint such person as they may think fit, whether a member of their own body or not, to be managing director, and from time to time revoke such appointment. They may delegate to such managing director all or any of the powers hereby made exercisable by the directors, except those relating to shares and borrowing, and any others as to which special provisions inconsistent with such delegation herein contained, and they shall have power to fix the remuneration of such managing director.

72. It shall be lawful for the directors, subject always to the sanction of the company, to arrange terms for the amalgamation of the company with any other company, or the amalgamation of any other company with the company, or for the disposal of the business, estate, and effects of the company, or any part thereof, respectively, to any other company, or for the sale or transference of the business, estate, and effects of any other company, or any part thereof, respectively, to the company, and in any such case upon such terms and in such manner as the directors shall think fit, and the directors shall have power to do all such things as may be necessary for carrying such amalgamation, sale, purchase, or other disposition
224 into effect, so far as a resolution or special resolution of the company is not by law necessary for such purpose; and in case any terms so arranged by the directors include or make necessary the dissolution of the company, the company shall thereupon be dissolved.

73. The directors may on behalf of the company enter into arrangements with the liquidators of any company authorized to make such arrangements as are contemplated by the 161st section of "the companies act, 1862," and they may apply any shares in

the capital of the company for the time being unissued for the purpose of carrying out such arrangements.

74. The company shall have power to use official common seals under "the companies seals act, 1864," in such foreign or other countries as the directors shall determine, and the directors shall have power to appoint any agent or agents, committees or committee, abroad to be duly authorized agents of the company for the purpose of affixing or using such foreign common seals, and they may impose such restrictions on the use thereof as they shall think fit.

75. The company's funds shall not be used in purchasing its own shares.

76. In no case nor under any circumstances shall personal liability attach to any director for anything done or omitted to be done by him in good faith, although loss arise; further, no transaction actually made or entered into on behalf of the company by the directors shall be invalidated or in any way prejudiced by reason of any breach of the regulations imposed by the preceding articles.

Borrowing power.

77. It shall be the duty of the directors to regulate the borrowing of money by the company in such manner that the total amount borrowed shall never exceed a sum equal to one thousand pounds per mile of railway belonging to or in course of construction by the company for the time being, provided that every person taking from the company or by assignment any bond, or debenture, or mortgage, or other obligation or security of the company shall be entitled to assume without inquiry that no such excess has taken place; and provided further, that no *bona fide* holder of any obligation or security shall be prejudiced by any such excess which may have taken place.

78. Every deed of security issued by the company for securing money borrowed shall be under the common seal of the company, duly stamped. The respective holders of or other persons entitled to such deeds shall proportionably, according to the amount of money secured thereby or contained therein, be entitled to be paid out of the property and assets of the company, including any unpaid capital for the time, the respective sums in such deeds of security mentioned and the interest thereof without any preference or priority one above another by reason of priority of date of any such deeds of security or otherwise howsoever, providing and declaring also that the capital of the company shall not be called, except for the payment of money borrowed, to a greater extent than £6 a share.

79. A register of deeds of security and transfers thereof shall be made and kept by the company at its registered office, in which shall be entered the number and date of every such deed, and the date of every transfer, and the sums secured, and all other necessary particulars for giving full information with respect to such deeds of security and transfers. Such register may be perused free of

charge at all reasonable times by any of the holders of the bonds or debentures or securities whatsoever of the company.

225 80. No transfer of a deed of security shall be valid against the company unless and until it be registered in the said register of deeds of security and transfers thereof.

81. Without prejudice to what is otherwise contained in these articles or in the memorandum of association, it is hereby provided that the respective lenders to the company or any of them may also, either in the principal deeds of security or separately or otherwise, receive mortgages or other securities or bonds, certificates, or obligations creating interests in mortgages or other securities of or upon all or any railway or railroad and its plant, rolling stock, rates, and revenues or any of them belonging to or vested in the company, and that in such form and transferable in such a way as may, according to the law of the State in which the premises so to be mortgaged or charged are situated, be competent; and, further, and without prejudice as aforesaid, the directors shall have power to grant, execute, and deliver, in name and on behalf of and for the company, all proper or necessary deeds of trust or mortgage or other deeds or certificates whatsoever of or in the premises, and to do and act in all other respects with all the powers of the company.

Disqualification of directors.

82. The office of director shall be vacated—

(1.) If he ceases to hold the due qualification.

(2.) If he holds any office or place of profit under the company other than that of managing director.

(3.) If he becomes of unsound mind or bankrupt, or compounds with his creditors, or is convicted of any crime.

83. All acts done by any meeting of directors, or of a committee of directors, or by any persons acting as a director, or as chairman or deputy chairman of directors, or as chairman of any meeting of directors or of any committee of directors shall, notwithstanding that it be afterwards discovered that there was some defect in the appointment of any such director or person or persons acting as aforesaid, or that they or any of them were disqualified, be as valid as if every such person had been duly appointed and was qualified to be a director.

Rotation of directors.

84. At the ordinary meeting to be held in the year 1881 and at the ordinary meeting in every subsequent year one-third of the directors for the time being, or the nearest number to one-third, shall retire from office.

85. The directors to retire in any year shall be those who have been longest in office, and in case of equality in that respect shall, unless the directors agree amongst themselves, be determined by lot.

86. A retiring director shall be re-eligible.

87. The company at the general meeting at which any directors retire in manner aforesaid shall fill up the vacated offices by electing

a like number of persons, unless it be necessary to elect more or fewer in order to give effect to a resolution for altering the number of directors.

88. If at any meeting at which an election of directors ought to take place the places of the vacating directors are not filled up the meeting shall stand adjourned till the same day in the next week, at the same time and place; and if at any such adjourned meeting the places of the vacating directors are not filled up the vacating directors, or such of them as have not had their places filled
226 up, shall continue in office until the ordinary meeting in the next year, and so on from time to time until their places are filled up.

89. The company may from time to time in general meeting increase or reduce the number of directors and alter the qualification of directors.

90. Any casual vacancy occurring in the board of directors may be filled up by the directors, but any person so chosen shall retain his office so long only as the vacating director would have retained the same if no vacancy had occurred.

Proceedings of directors.

91. The directors may meet together for the dispatch of business, adjourn, and otherwise regulate their meetings as they think fit, and determine the quorum necessary for the transaction of business by the board of committees. Until otherwise fixed, the quorum for a board meeting shall be two directors.

92. All meetings of directors shall be held in the United Kingdom of Great Britain and Ireland.

93. Questions arising at any meeting of directors shall be decided by a majority of votes. In case of an equality of votes, the chairman shall have a second or casting vote.

94. A director may at any time summon a meeting of the directors.

95. The directors may elect one of the directors as chairman of the directors and determine the period for which he is to hold office, and may also, if they think fit, choose another director to act as deputy chairman for the same period. If no such chairman or deputy chairman be elected, or if at any meeting the chairman or deputy chairman be not present at the time appointed for holding the same, the directors present shall choose one of their number to be chairman of such meeting. Any chairman or deputy chairman elected as aforesaid shall cease to hold office on becoming disqualified as a director.

96. The directors may delegate any of their powers to committees consisting of such members of their body as they think fit. Any committee so formed shall in the exercise of the powers so delegated conform to any regulations that may be imposed on them by the directors.

97. A committee may elect a chairman of their meetings. If no such chairman be elected, or if he is not present at the time ap-

pointed for holding the same, the members present shall choose one of their number present to be chairman of such meeting.

98. A committee may adjourn as they think proper. Questions at any meeting shall be determined by a majority of votes of the members present, and in case of an equal division of votes the chairman shall have a casting vote.

99. The directors shall cause minutes to be made in books provided for the purpose—

1st. Of all appointments of officers made by the directors; and

2d. Of all orders made by the directors or by committees of directors; and

3d. Of all resolutions and proceedings of the directors and committees of directors.

And any such minute as aforesaid, if signed by any person
227 purporting to be the chairman of the meeting to which it relates, or of the next meeting of the directors, or of the same committee, shall be receivable in evidence without any further proof.

Dividends or bonuses and reserve fund, and general provisions.

100. The directors may, with the sanction of the company in general meeting, from time to time declare a dividend or bonus to the members in proportion to their shares, but no dividend or bonus shall be made except out of nett profits, as shown upon the balance-sheet, which shall from time to time have been examined and passed by the auditor, but it may be either in cash or shares, or partly both.

101. The directors may at any time in any year pay such sum or sums as they think fit on account or in anticipation of dividend or by way of interim dividend.

102. It shall be the powers of the directors, before recommending any dividend or bonus, to set aside out of the profits of the company such sums as they think proper as a reserve fund to meet contingencies, provide against losses, or for equalizing dividends, or to cover depreciation or diminution in value of any property which shall from time to time be acquired by the company, or for any other purpose of the company sanctioned by the company, and the directors may invest the sum so set apart as a reserve fund upon such securities as they may from time to time approve.

103. In any case where the board may think fit, purchases or investments of any kind —, and when the general or reserve funds or otherwise may be made and conveyances or securities taken and held in the names of the trustees to be named by the directors.

104. No member shall be entitled to receive payment of any dividend or bonus in respect of a share or shares whilst any moneys may be due or owing from him to the company in respect of such share or shares, and any dividend or bonus which but for this provision might be payable to him may be set off by the company against the debt owing to the company from such member.

105. Every dividend or bonus payable in respect of any share held by several persons jointly may be paid to and an effectual receipt given by any of such persons.

106. All dividends and bonuses remaining unclaimed for three years after having been declared may, by a resolution of the directors or of a general meeting, be appropriated to and retained by the company, but the directors may at any time thereafter, if they shall so think fit, as a matter of grace and favor, authorize the payment thereof to any claimant or claimants who shall adduce a title thereto to the satisfaction of the directors.

107. No dividend or bonus shall under any circumstances whatever bear interest against the company.

Dissolution.

108. If the directors shall pass a resolution recommending the company to be dissolved, and a general meeting shall, in pursuance of such recommendation, resolve that the company shall be dissolved and a second general meeting shall confirm that resolution, then the company shall thenceforth subsist and carry on business for the purpose only of winding up its affairs, and its affairs shall be wound up, and it shall be dissolved in accordance with and subject to
228 the provisions of "the companies act, 1862 and 1867," which are and may be applicable to the voluntary winding up of a company under the same on the occurrence of an event on which it is provided that a company under the same may be wound up voluntarily.

109. Farther, if four or more members qualified in terms of the thirty-sixth article hereof shall request the directors in writing to convene an extraordinary general meeting of the members to consider the propriety and expediency of winding up the company, they shall be bound to do so; and if at such meeting it is resolved that the company shall be dissolved and wound up and a second general meeting shall confirm that resolution, then the course provided in the immediately preceding article shall be followed and carried out.

110. The majority necessary to carry any resolution, as set forth in the two immediately preceding articles, shall not be less than two-thirds in value of the members present, personally or by proxy, at the aforesaid meetings.

Accounts.

111. The directors shall cause true accounts to be kept of the company's business and transactions, and of all sums of money received and expended by the company, and the matters in respect of which such receipt and expenditure take place, and of the credits and liabilities of the company.

112. A statement of the company's true financial position, made up yearly to such time in each year as the directors may annually determine, shall be laid before the immediately following ordinary general meeting, and which meeting shall receive and consider the same.

Audit.

113. Once at least in every year, namely, preparatory to the annual ordinary general meeting, the accounts of the company shall be examined and the correctness of the annual financial statement ascertained by one or more auditor or auditors to be appointed by the company.

114. The auditor or auditors shall be appointed by the company at the first ordinary meeting of the company, and thereafter at the ordinary general meeting in each year.

115. The auditors need not, but may, be members of the company; but no person is eligible as an auditor who is interested otherwise than as a member in any transaction of the company, and no director or other officer of the company is eligible during his continuance in office.

116. The remuneration of the auditors and their term of office shall from time to time be fixed by the company in general meeting, and until otherwise ordered by general meeting there shall be only one auditor; but a firm appointed as auditors shall be reckoned as one auditor.

117. Any auditor shall be re-eligible on quitting his office.

118. If any casual vacancy occurs in the office of auditor the directors shall supply it.

119. Every auditor shall be supplied with a copy of the annual financial statement, and it shall be his duty to examine the same with the accounts and vouchers relating thereto.

120. Every auditor shall have access to all the books and accounts kept by the company. He may, at the expense of the com-
229 pany, employ accountants or other persons to assist him in investigating such accounts, and he may, in relation to such accounts, examine the directors or any officer of the company.

121. The auditors shall certify to the members the correctness of the annual financial statement, and they may give such information to the members on the state of the company's affairs as they may think fit.

Notices.

122. A notice — served by the company upon any member, either personally or by sending it through the post in a prepaid letter addressed to such member at his registered place of abode.

123. All notices directed to be given to the members shall, with respect to any share to which persons are jointly entitled, be given to whichever of such persons is named first in the register of members, and notice so given shall be sufficient notice to all the holders of such share.

124. Any notice if served by post shall be deemed to have been served on the day following that on which the letter containing the same was posted, and in proving such service it shall be sufficient to prove that the letter containing the notice was properly addressed and put into the post office.

125. Any member residing out of the United Kingdom may name an address within the United Kingdom at which all notices

shall be served upon him, and all notices served at such address shall be deemed to be well served. If he shall not have named such an address he shall not be entitled to any notice of any general or other meeting whatsoever, and a notice of any meeting advertised in any Dundee newspaper shall be held sufficient notice to all shareholders, wherever residing, of all such meetings.

126. All notices shall be deemed to have been served upon the holders of stock or stock warrants and upon members residing out of the United Kingdom who have not named an address for service within the United Kingdom if they shall be advertised in one daily newspaper published in Dundee, and all notices required by law to be given by advertisement shall be advertised in the like newspaper. The company shall not be bound to serve notice on the holders of stock or share warrants or on such members in any other manner.

Interpretation clause.

127. In the construction of these articles, unless repugnant to the context, the singular shall include the plural, the masculine the feminine, and *vice versa*, and the words interpreted by this clause shall bear the meanings next hereinafter assigned to them, viz:

230 Words interpreted.	Meanings assigned thereto.
The company	The company established under the memorandum of association to which these articles are annexed.
Capital	The capital, for the time being, raised or subscribed or authorized to be raised for the purposes of the company.
Shares	The shares or stock into which the capital is divided and interests in the property of the company corresponding with such shares and stock.
Members	Shareholders, for the time being, of the company, whether individuals, firms, or companies.
General meetings	General meetings, whether ordinary or extraordinary, of the members lawfully convened and held in accordance with the regulations, for the time being, of the company.
Persons	Corporations, companies, and firms, as well as individuals.
Directors	The directors, for the time being, of the company.
Secretary	The secretary, for the time being, of the company.
Office of the company	The registered office, for the time being, of the company.
Month	A calendar month.
The register of members	The register of members to be kept pursuant to the statute.

Words interpreted.	Meanings assigned thereto.
Deed of security or deeds of security.	Any bond debenture, mortgage debenture, mortgage, trust deed, promissory note secured by trust deed or mortgage or other deed for borrowed money or any security of the company whatsoever.
Company's regulations	The regulations, for the time being, for the management of the company.

Names, addresses, and descriptions of subscribers.

Airlie, of Cortachy Castle, Kirriemuir, in the county of Forfar.
William Lowson, of Dundee, in the county of Forfar, merchant.
Thomas H. Cox, of Dundee, in the county of Forfar, merchant.
John Leng, of Kimbrae, Newport, in the county of Fife, newspaper proprietor.
P. M. Cochrane, of Dundee, in the county of Forfar, merchant.
Alex. Henderson, of Dundee, in the county of Forfar, merchant.
Alex'r Nicoll, of Dundee, in the county of Forfar, merchant.
James Stevenson, of Dundee, in the county of Forfar, dyer.
John M. Watson, of Dundee, in the county of Forfar, stockbroker.
William Mackenzie, of Dundee, in the county of Forfar, stockbroker.

Dated the 30th day of April, 1880 years.

Witness to the above signatures:

WM. ARTHUR BELL,
Apprentice to Messrs. Pattulo & Thornton,
Solicitors, 1 Bank Street, Dundee.

231 And thereupon and thereby the said Oregonian Railway Company, Limited, became and is a duly incorporated company, with the rights, powers, privileges, and franchises mentioned and described in said memorandum and articles of association, and said corporation has its registered office at Dundee, in Scotland, and owns a railroad in the State of Oregon and transacts business in Oregon, and has duly complied with the laws of the said State of Oregon for the regulation of foreign corporations doing business therein and with all the foreign laws hereinbefore set out and referred to.

That at all the times herein mentioned the defendant was and still is a corporation under the general incorporation laws of the State of Oregon, having its principal place of business at Portland, in said State, and that its powers, duties, rights, and franchises are duly set forth and disclosed in the certain articles of incorporation of defendant, duly made and executed, which articles of incorporation of defendant are in words and figures to the effect as follows:

232 *Articles of Incorporation of the Oregon Railway and Navigation Company. Filed June* 13, 1879.

Know all men by these presents that we, the undersigned, Henry Villard, James B. Fry, Artemas H. Holmes, Christian Bors, W. H. Starbuck, and Chas. E. Bretherton, all of the city and State of New York, and H. W. Corbett, C. H. Lewis, J. N. Dolph, Paul Schulze, and H. Thielsen, all of Portland, Oregon, do hereby associate ourselves as a corporation under the general incorporation laws of the State of Oregon, and do hereby adopt the following articles of incorporation:

Article I.

The name of the corporation shall be "The Oregon Railway and Navigation Company."

Article II.

The duration of the corporation shall be ninety-nine years.

Article III.

The business of this corporation shall be—

First. To construct and equip the following railroad and telegraph lines, namely: First, a line along the south side of the Columbia river, between Portland and Umatilla; second, a line from Umatilla across the Blue Mountains, through the Grande Ronde Valley, in a southeasterly direction, to a point on the east State line of Oregon, towards Boisé City; third, a line from Umatilla to Wallula, in Washington Territory; fourth, a line from Wallula, in Washingington Territory, by way of Weston, southwardly, to a point of intersection with the line in Oregon secondly described; fifth, from Walla Walla, in Washington Territory, in a northeasterly direction, by Dayton, to the Snake river; sixth, from a point on the Snake river, in Washington Territory, near the mouth of the Palouse river, along the valley of the Palouse river, in a northeasterly direction, to the head-waters of the Spokane river; and to maintain and operate such railroad, telegraph line, and branches, carry freight and passengers thereon, and receive tolls for same.

Second. To purchase or consolidate with or lease or operate and maintain, on such terms as may be agreed upon, any railroad or railroads in Oregon, Washington, Idaho, or Utah, with its or their rolling stock, equipments, or appurtenances, and to complete the same to its authorized terminus.

Third. To facilitate and assist the construction, building, extension, equipment, and operation of any railroad line, steamship line, or steamboat line in Oregon, Washington, or Idaho, or steamship line running from Portland to any other ports on the Pacific Ocean and connecting or intending to connect or exchange traffic with the railroads, steamships, or steamboats of this corporation, and for such purpose to subscribe for or purchase the stocks or bonds of any company owning or operating any such railroads, steamships, or steamboats; to guarantee or otherwise secure the payment of any such bonds or the interest thereon by pledge or mortgage of the property of this corporation or any part thereof or otherwise, and to consolidate with or to lease or contract for the operation and maintenance of any and all such railroads, steamship or steamboat com-
234 panies, so aided, and to obtain from Congress or the Legislatures of Washington, Idaho, and Utah Territories the neces-

sary charters or other legislative authority for the extension of the railroads of this company into said Territories or for the carrying out of any other of the objects herein specified.

Fourth. To build, purchase, and own and run steamships between the ports of Portland, Astoria, Victoria, Sitka, San Francisco, or any other ports in the North Pacific Ocean, and steamboats on the Columbia, Willamette, and Snake rivers, and also to build, purchase, and own docks, piers, warehouses, locks, ferry-boats, stages, and other means of transportation in connection with the railroads, steamships, and steamboats above mentioned.

Fifth. To purchase or acquire lands or lots, whether adjacent or contiguous to its railroads, docks, or warehouses or not, and to hold, possess, improve, lease, sell, mortgage, or otherwise dispose of such lands in such manner as may be deemed fit.

Sixth. To borrow money on bonds, notes, or otherwise for the general purposes of the corporation, and to mortgage its railroads, steamships, steamboats, franchises, rolling stock, and any and all other property to secure the payment thereof.

Seventh. To do all other things necessary or proper for the accomplishment of the objects above specified.

Article IV.

The principal office of the company shall be at Portland, in Oregon.

Article V.

The capital stock of the company shall be six millions ($6,000,000) of dollars (increased to $24,000,000).

Article VI.

Such capital stock shall be divided into sixty thousand shares of one hundred dollars each.

235 Article VII.

Three directors shall form a quorum of the board of directors, whatever may be their number.

Article VIII.

H. W. Corbett, J. N. Dolph, and C. E. Bretherton, or any two of them, are hereby appointed to open stock books, receive subscriptions, and organize the company.

In witness whereof we have to these presents, exécuted in tripli

cate, set our hands and seals this twelfth day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

HENRY VILLARD,
By CHAS. E. BRETHERTON,
Attorney-in-Fact.
ARTEMAS H. HOLMES,
By CHAS. E. BRETHERTON,
Attorney-in-Fact.
WILLIAM H. STARBUCK,
By CHAS. E. BRETHERTON,
Attorney-in-Fact.
JAMES B. FRY,
By CHAS. E. BRETHERTON,
Attorney-in-Fact.
CHRISTIAN BORS,
By CHAS. E. BRETHERTON,
Attorney-in-Fact.
CHAS. E. BRETHERTON.
H. W. CORBETT,
C. H. LEWIS,
J. N. DOLPH,
PAUL SCHULZE,
H. THIELSEN,
By CHAS. E. BRETHERTON,
Attorney-in-Fact.

Witness:
I. R. MOORES.
C. LANGSTAKE.

236 STATE OF OREGON, } ss:
County of Multnomah, }

Be it remembered that on this 12th day of June, 1879, before me, the undersigned, a notary public in and for said county and State, personally appeared the within-named Chas. E. Bretherton, known to me to be the identical person described in and who executed the within instrument as the attorney-in-fact of Henry Villard, James B. Fry, Artemas H. Holmes, W. H. Starbuck, H. Thielsen, Christian Bors, and acknowledged to me that he executed the same in the name and as attorney-in-fact of said Henry Villard, James B. Fry, Artemas H. Holmes, W. H. Starbuck, H. Thielsen, and Christian Bors and as the act and deed of said Henry Villard, James B. Fry, Artemas H. Holmes, W. H. Starbuck, H. Thielsen, and Christian Bors for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and notarial seal on the day and year above written.

I. R. MOORES,
Notary Public.

STATE OF OREGON, } ss:
County of Multnomah, }

Be it remembered that on this 12th day of June, 1879, before me, the undersigned, a notary public in and for said county and State, personally appeared the within-named Chas. E. Bretherton, H. W. Corbett, C. H. Lewis, J. N. Dolph, and P. Schulze, known to me to be the identical persons described in and who executed the within instrument, and acknowledged to me that they executed the same as their act and deed for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and notarial seal on the day and year above written.

I. R. MOORES,
Notary Public.

Supplementary Articles of Incorporation.

Whereas at the annual meeting of the stockholders of the Oregon Railway and Navigation Company, held at the office of said corporation, in the city of Portland, in the State of Oregon, on the
237 19th day of June, A. D. 1882, the following resolutions were, by the vote of the holders of more than three-fourths of the capital stock of said company and by the unanimous vote of all the stock represented at said meeting, adopted, namely:

Resolved, That the directors of this company be, and they are hereby, instructed and directed to file, as soon as they can be reasonably prepared and executed, supplementary articles of incorporation amending article III of the present articles of this company by inserting at the end of subdivision VII of article III of the original articles the following subdivisions:

VIII. To construct and equip the following railroad and telegraph lines, namely:

First. A line from the city of Walla Walla, in Washington Territory, in a generally northeasterly direction, to Snake river, at or near Texas Ferry, and thence following the valley of the Snake river to Lewiston, in Idaho Territory, with a branch from a point on said line about three miles south of Grange City, in a generally easterly direction, to the said city of Lewiston.

Second. A line from the said city of Walla Walla to the town of Pendleton, in the county of Umatilla, in the State of Oregon.

Third. A line from a junction with the present railroad of said company between The Dalles and Umatilla, in the State of Oregon, at a point at or near the mouth of John Day's river, up the valley of said river a distance of about ninety miles, to the big bend of said river, with a branch from said line from a point at or near the mouth of Rock creek, up the valley of said Rock creek, to a point about thirty miles distant from the mouth thereof.

Fourth. A line from a junction with the road of said company extending from The Dalles to Umatilla, in the State of Oregon, at or near the mouth of Willow creek, up the valley of Willow creek, to the town of Heppner.

Fifth. A line from a point of junction with the present lo-
238 cated line of said company's road from Umatilla to Baker City, at or near the mouth of Butter creek, up the valley of Butter creek, to a point thirty miles distant from the said point of junction, and to maintain and operate such railroad and telegraph lines and branches and carry freight and passengers thereon and receive tolls for the same.

Know all men by these presents that we, the undersigned, Henry Villard, A. H. Holmes, W. H. Starbuck, C. H. Lewis, J. N. Dolph, S. G. Reed, Wm. Endicott, Jr., Geo. M. Pullman, Henry Failing, W. S. Ladd, and C. H. Prescott, being all the directors of the Oregon Railway and Navigation Company, in pursuance of said resolution, do hereby adopt the following:

Supplementary Articles of Incorporation of the Oregon Railway and Navigation Company.

The Oregon Railway and Navigation Company hereby adopt the following supplementary articles of incorporation in addition to its present articles of incorporation for the purpose of engaging in the new enterprises or business pursuits hereinafter specified in addition to the enterprises described in the original articles of incorporation and in the same manner as if there were inserted at the end of subdivision VII of article III of the original articles the following subdivision:

VIII. To construct and equip the following railroad and telegraph lines, namely:

First. A line from the city of Walla Walla, in Washington Territory, in a generally northeasterly direction, to Snake river, at or near Texas Ferry, and thence following the valley of Snake river to Lewiston, in Idaho Territory, with a branch from a point on said line about three miles south of Grange City, in a generally easterly direction, to the said city of Lewiston.

Second. A line from the said city of Walla Walla to the town of Pendleton, in the county of Umatilla, in the State of Oregon.

239 Third. A line from a junction with the present railroad of said company between The Dalles and Umatilla, in the State of Oregon, at a point at or near the mouth of John Day's river, up the valley of said river a distance of about ninety miles, to the big bend of said river, with a branch from said line from a point at or near the mouth of Rock creek, up the valley of said Rock creek, to a point about thirty miles distant from the mouth thereof.

Fourth. A line from a junction with the road of said company extending from The Dalles to Umatilla, in the State of Oregon, at or near the mouth of Willow creek, up the valley of Willow creek, to the town of Heppner.

Fifth. A line from a point of junction with the present located line of said company's road from Umatilla to Baker City, at or near the mouth of Butter creek, up the valley of Butter creek, to a point thirty miles distant from the said point of junction, and to maintain and operate such railroad and telegraph lines and branches

and to carry freight and passengers thereon and receive tolls for the same.

In witness whereof we have to these presents, executed in triplicate, set our hands and seals this 3d day of July, in the year of our Lord one thousand eight hundred and eighty-two.

In presence of—	(Signed)	H. Villard.	[SEAL.]
(Signed) W. T. Hume.	(Signed)	Artemas H. Holmes.	[SEAL.]
(Signed) Joseph Simon.	(Signed)	W. H. Starbuck.	[SEAL.]
Signed and sealed by—	(Signed)	C. H. Lewis.	[SEAL.]
H. Villard, A. H. Holmes,	(Signed)	J. N. Dolph.	[SEAL.]
W. H. Starbuck, S. G.	(Signed)	S. G. Reed.	[SEAL.]
Reed, Wm. Endicott, Jr.,	(Signed)	Wm. Endicott, Jr.	[SEAL.]
and Geo. M. Pullman.	(Signed)	Geo. M. Pullman.	[SEAL.]
In the presence of—	(Signed)	Henry Failing.	[SEAL.]
(Signed) H. H. Tyndale.	(Signed)	W. S. Ladd.	[SEAL.]
(Signed) C. A. Spofford.	(Signed)	C. H. Prescott.	[SEAL.]

239½ STATE OF OREGON, } ss:
County of Multnomah, }

Be it remembered that on the 3d day of July, A. D. 1882, before the undersigned, a notary public in and for said county and State, personally appeared the above-named C. H. Lewis, J. N. Dolph, Henry Failing, W. S. Ladd, and C. H. Prescott, who are known to me to be the identical persons described in and who executed the foregoing instrument, and acknowledged to me that they executed the same for the uses and purposes therein mentioned.

In testimony whereof I have hereunto set my hand and seal the day and year above written.

(Signed) W. T. HUME,
[SEAL.] *Notary Public in and for the State of Oregon.*

STATE OF NEW YORK, } ss:
City and County of New York, }

Be it remembered that on this 1st day of August, 1882, before me, Hector H. Tyndale, a commissioner of the State of Oregon in and for the State of New York, personally appeared the above-named Henry Villard, Artemas H. Holmes, William H. Starbuck, Simeon G. Reed, William Endicott, Jr., and George M. Pullman, who are known to me to be the persons described in and who executed the foregoing instrument, and they severally acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal on the date above written.

(Signed) HECTOR H. TYNDALE,
[SEAL.] *Commissioner for Oregon in New York.*

240 That on or about the first day of August, 1881, by an indenture of lease of that date, the plaintiff being thereto duly

authorized under the laws aforesaid, and of this State, and under the memorandum and articles of association hereinbefore set forth, demised unto the defendant a certain railway or railroad, the same being the railroad owned by the plaintiff in the State of Oregon as aforesaid, together with certain stations, depots, and other property connected therewith and belonging thereto, the property of plaintiff, for a term of ninety-six years from the date thereof; and the defendant, being thereto duly authorized by law and its said articles of incorporation and by the resolution of its board of directors, in consideration thereof, did by the terms of said indenture of lease covenant and agree, among other things, to pay to the plaintiff therefor the yearly rental of twenty-eight thousand pounds sterling money of Great Britain in equal half-yearly payments on the fifteenth of May and eleventh of November in each year in advance.

That upon the execution of said indenture of lease the said defendant entered into possession of said demised property and has continued in the enjoyment of the same to the present time, but that on the fifteenth day of May, 1884, the defendant, pretending that neither it nor the plaintiff were authorized or empowered by law to enter into said indenture of lease, tendered and offered to restore possession of said demised property to plaintiff in its then condition, but that at the time of so offering and tendering to restore said property the same was not in equally good condition as to repair, equipment, and value to the plaintiff as when received by the defendant and as contemplated by the terms of said leasing, and the defendant pretended to disavow said lease.

That thereupon plaintiff would not accept said surrender so offered by defendant, but requested defendant to continue in the possession of said property and road and operate the same to prevent losses which might otherwise result from suddenly discontinuing such operation upon the understanding that no act by the said defendant in continuing the operation of said road should in any manner prejudice or work any disadvantage to said defendant in the position taken by it as aforesaid or in any position it might thereafter take in respect to said lease in any suit, action, or proceeding, and on the further understanding that the plaintiff thereby made no admission that the said lease is other than valid and binding in all particulars, and that such operation of the road by the defendant should in no way prejudice the rights of the plaintiff under or in respect of said lease.

That upon said understanding defendant consented to retain its possession of said property.

That a written memorandum of said understanding and consent was entered into between the plaintiff, acting by its agent in that behalf, and the defendant, which memorandum was in the words and figures and to the effect following—that is to say:

Memorandum.

The Oregon Railway and Navigation Company having asserted the legal invalidity of the lease executed to that company by the

Oregonian Railway Company, Limited, dated August, 1881, and disavowed and disclaimed any obligation thereunder, and having offered to restore and tendered to the company last mentioned the property purporting to be demised by said lease, and Edmund Robertson, representing the said Oregonian Company, having requested Mr. T. Jefferson Coolidge, president of the said Oregon Railway and Navigation Company, to continue the operation of the railroad purporting to be demised by said lease for the purpose of
241 preventing embarrassments and losses which might result from suddenly discontinuing the operation of the said railroad, Mr. Coolidge has expressed his willingness to use his efforts to procure the operation of said road to be continued for the period of six months from the present time, so far as the same may be accomplished without serious loss to the Oregon Railway and Navigation Company, but it is understood that he incurs hereby no legal obligation, either personal or on behalf of said company; and it is also understood that no act by him or by said Oregon Railway and Navigation Company in so continuing the operation of said road shall in any manner prejudice or work any disadvantage to said Oregon Railway and Navigation Company in the position taken by said company as aforesaid or in any position it may hereafter take in respect to said lease in any suit, action, or proceeding, or otherwise. It is further expressly understood that the said Edmund Robertson on behalf of the Oregonian Railway Company, makes no admission that the said lease is other than valid and binding in all particulars, and that this paper shall in no way prejudice the rights of the Oregonian Railway Company under or in respect of said lease.

Dated New York, May 15, 1884.

T. JEFFERSON COOLIDGE,
President O. R. & N. Co.
EDMUND ROBERTSON,
Attorney-in-Fact for the Oregonian Railway Company, Limited.

That the defendant has been in possession of said demised property from the date of said indenture of lease to the present time.

That, though requested thereto by the plaintiff, the defendant has refused and neglected to pay to plaintiff the sum of fourteen thousand pounds sterling, the installment of rent which as aforesaid became due under said indenture of lease on the fifteenth day of May, 1884, and the same and the whole thereof remains due and unpaid.

That the equivalent of said sum of fourteen thousand pounds sterling is the sum of $68,131.00.

Wherefore plaintiff prays judgment against said defendant for said sum of $68,131.00 in lawful money of the United States, with lawful interest thereon from and after the said 15th day of May, 1884, and for the costs and disbursements of this action.

H. H. NORTHUP, W. B. GILBERT,
J. W. WHALLEY & PAUL R. DEADY,
Attorneys for Plaintiff.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, Hugh Roger, being first duly sworn, say I am the managing agent of the plaintiff above named within the State of Oregon, and that the foregoing amended complaint is true, as I verily believe.

HUGH ROGER.

Subscribed and sworn to before me this 15th day of August, 1884.

PAUL R. DEADY,
[SEAL.] *Notary Public for Oregon.*

242 Due service of a copy of the above amended complaint is hereby admitted to have been duly made on me, at Portland, Multnomah county, Oregon, on this 15th August, 1884.

DOLPH, BELLINGER, MALLORY & SIMON.

Endorsed: Filed August 15, 1884. R. H. Lamson, clerk.

And afterwards, to wit, on Monday, the 18th day of August, 1884, the same being the 55th judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1035.

AUGUST 18, 1884.

Now, at this day, comes the defendant in the above-entitled cause, by Mr. Cyrus A. Dolph, of counsel, and, upon motion of said defendant, it is ordered that it have until September 5th next in which to demur or answer.

And afterwards, to wit, on the 5th day of September, 1884, there was duly filed in said court an answer to amended complaint in words and figures as follows, to wit:

Answer to Amended Complaint.

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

The defendant answers the amended complaint herein—

That it has no knowledge or information sufficient to form a belief as to whether the plaintiff was at any time or is a corporation created or existing under or by virtue of an act of Parliament of

the United Kingdom of Great Britain and Ireland entitled An act for the incorporation, regulation, and winding up of trading companies and other associations, dated and passed August 7, 1862, and of the acts amendatory thereof, or as to whether plaintiff at any time was or is a corporation by virtue of an act of said Parliament, or as to whether plaintiff at any time was or is at all a corporation.

The defendant has no knowledge or information sufficient to form a belief as to whether the persons in the amended complaint mentioned or as to whether any persons, on the 30th day of April, 1880, or at any time, in pursuance of any provisions of the said alleged companies act or of the provisions of any act of said Parliament or at all, made or entered into or executed any memorandum of association entitled "A memorandum of association of the Oregonian Railway Company, Limited," or as to whether any memorandum of association was at all made, executed, or entered into at any time in words and figures or effect as recited and set forth in said amended complaint.

243 That defendant has no knowledge or information sufficient to form a belief as to whether the persons in the said amended complaint mentioned, or as to whether any persons on the 30th day of April, 1880, or at any time, in pursuance of any provisions of the said alleged or of any act of the said Parliament, or at all, made or entered into or executed any articles of association or delivered any articles of association to the registrar of the joint-stock companies, as required by section 17 of said alleged act, or otherwise, or as to whether such alleged registrar did at any time retain or register any memorandum or articles of association or certify the Oregonian Railway Company, Limited, to be incorporated or to be limited, or as to whether any articles of association were at any time made, executed, or entered into in words or figures or effect as set forth in said amended complaint.

That defendant denies that plaintiff became or is vested with the rights, powers, privileges, or franchises to build, construct, reconstruct, divert, equip, own, operate, lease, sue, transfer, or dispose of or purchase or otherwise acquire, hold, operate, use, work, or deal in any railway or railways, railroad or railroads, or branch or extension thereof, or telegraph or telephone lines, warehouse or warehouses, or building or buildings for receiving or storing grain or other produce in the States of Oregon, California, or Nevada, or in the Territories of Washington or Idaho, or of carrying passengers or freight in either of said States or Territories; and that defendant has no knowledge or information sufficient to form a belief as to whether said plaintiff became or is an incorporated company or had or has any of the other rights, powers, privileges, or franchises mentioned or described in said alleged memorandum or articles of association.

That defendant has no knowledge or information sufficient to form a belief as to whether plaintiff has its or any registered office in Dundee, in Scotland, or elsewhere, or transacts business in the State of Oregon or has complied with the laws of said State for the regulation of foreign corporations doing business therein, or with the

foreign laws as set out in said complaint, or has complied with any foreign laws so as to entitle or authorize it to transact business in the State or elsewhere.

That defendant has no knowledge or information sufficient to form a belief as to whether the plaintiff owns a railroad in the State of Oregon.

That defendant admits that it is and was during the times in the complaint mentioned a corporation duly incorporated under the laws of the State of Oregon; but defendant denies that it ever had or has the power, right, or franchise to purchase or lease any railroad or railroads in the State of Oregon.

That defendant denies that at any time plaintiff demised unto it the railway or railroad in the complaint mentioned, and defendant alleges that about the first day of August, 1881, the president and assistant secretary of the defendant signed an instrument in writing and affixed thereto defendant's corporate seal, which instrument was in its terms such an indenture of lease as is described in the amended complaint, and is, in fact, the instrument so described; but defendant denies that either plaintiff or defendant was at any time authorized to enter into said or any indenture of leasing, and defendant alleges that both the plaintiff and the defendant were without the power or authority to enter into such contract; that the State of Oregon did not authorize or consent to such contract or leasing or to any leasing by the plaintiff or taking in lease of the defendant of said railway, and the said pretended agreement was unauthorized and void.

That it is true defendant, upon the execution of said pretended lease, entered into the possession of said railway and so con-
244 tinued to the 15th day of May, 1884, but defendant denies that since said last-named date it has or now is in possession of the same under or in pursuance of the said pretended lease.

And the defendant alleges that at all times since said 15th of May, 1884, it has had and now has possession of said railway property in pursuance of the memorandum of agreement between T. Jefferson Coolidge, as president of the defendant, and Edmund Robertson, as attorney-in-fact for plaintiff, which memorandum is set forth in the amended complaint. Defendant denies that at the time of tendering and offering to restore said property the same was not in equally good condition as to repair, equipment, or value as when received from plaintiff by defendant.

Defendant denies that any sum of money is unpaid and due plaintiff from defendant, and it alleges that it has fully paid the rental provided for in said pretended lease for the full period during which it held possession of said railway under the same, being for the period ending on said 15th day of May, 1884.

Wherefore defendant prays judgment against plaintiff for its costs and disbursements herein.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

STATE OF OREGON, }
County of Multnomah, } *ss:*

I, Theodore Wygant, being first duly sworn, say that I am secretary of the defendant and that I have read the foregoing answer and believe the same to be true.

THEODORE WYGANT.

Subscribed and sworn to before me this 5th day of September, 1884.

W. T. HUME,
[SEAL.] *Notary Public in and for Oregon.*

Service upon us of copy of within answer this day is hereby admitted, September 5, 1884.

WHALLEY, NORTHUP & DEADY,
Of Counsel for Plaintiff.

Endorsed: Filed September 5, 1884. R. H. Lamson, clerk.

And afterwards, to wit, on the 6th day of September, 1884, there was duly filed in said court a stipulation in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff, }
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant. }

It is hereby agreed between the plaintiff and defendant in the above-entitled cause that the plaintiff may have ten days from this date in which to move, demur, plead, or reply to the answer of defendant to the amended complaint in this cause.

DOLPH, BELLINGER, MALLORY & SIMON,
Defendant's Attorneys.

Endorsed: Filed September 6th, 1884. R. H. Lamson, clerk.

And afterwards, to wit, on the 9th day of September, 1884, there was duly filed in said court a demurrer in words and figures as follows, to wit:

245 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff, }
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant. }

And now comes the above-named corporation plaintiff, by its attorneys, Northup & Gilbert and J. W. Whalley, and demurs to the

answer of the defendant herein filed for the reason that said answer constitutes no defense to the cause of action in the complaint alleged.

NORTHUP & GILBERT, J. W. WHALLEY,
Attorneys for Plaintiff.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

Due service of the within demurrer is hereby admitted to have been made on us, at Portland, Multnomah county, Oregon, on this the 9th day of September, 1884.

DOLPH, BELLINGER, MALLORY & SIMON,
Defendant's Attorneys.

Endorsed: Filed September 9, 1884. R. H. Lamson, clerk.

And afterwards, to wit, on the 9th day of September, 1884, there was duly filed in said court a notice in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

To the above-named defendant, and to Messrs. Dolph, Bellinger, Mallory & Simon, its attorneys.

GENTLEMEN: Take notice that on Monday, the 15th day of September, 1884, at the hour of 10 o'clock a. m. of said day, or as soon thereafter as counsel can be heard, the plaintiff, by its attorneys, will, at the United States circuit court room, at Portland, Oregon, move the above-entitled court to set down for hearing, at a day certain, the demurrer herein filed by the plaintiff to the answer of defendant.

Respectfully yours,
W. B. GILBERT AND J. W. WHALLEY,
Attorneys for Plaintiff.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

Due service of the within notice is hereby admitted to have been made on us, at Portland, Multnomah county, Oregon, on this the 9th day of September, 1884.

DOLPH, BELLINGER, MALLORY & SIMON,
Defendant's Attorneys.

Endorsed: Filed September 9, 1884. R. H. Lamson, clerk.

And afterwards, to wit, on the 11th day of September, 1884, there was duly filed in said court a stipulation in words and figures as follows, to wit:

246 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

It is hereby stipulated and agreed by and between the plaintiff and defendant, herein acting by and through their respective attorneys, that the demurrer to the answer herein filed shall be heard, the court consenting, on the first day the above-entitled court shall meet after Saturday, the 20th day of September, A. D. 1884.

NORTHUP & GILBERT AND J. W. WHALLEY,
Attorneys for Plaintiffs.
DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

Endorsed: Filed September 11, 1884. R. H. Lamson, clerk.

And afterwards, to wit, on Monday, the 15th day of September, 1884, the same being the 69th judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in such case, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1035.

SEPTEMBER 15, 1884.

Now, at this day, comes the plaintiff in the above-entitled cause, by Mr. John J. Whalley, and the defendant, by Mr. Charles B. Bellinger, of counsel, and, upon motion of said defendant, it is ordered that said defendant be, and it is hereby, allowed to withdraw its answer to the amended complaint herein and file an amended answer thereto.

And afterwards, to wit, on the 16th day of September, 1884, there was duly filed in said court an answer to amended answer in words and figures as follows, to wit:

Answer to Amended Complaint.

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

The defendant answers the amended complaint herein—
That it has no knowledge or information sufficient to form a belief

as to whether the plaintiff was at any time or is a corporation created or existing under or by virtue of an act of Parliament of the United Kingdom of Great Britain and Ireland entitled An act for the incorporation, regulation, and winding up of trading companies and other associations, dated and passed August 7, 1862, and
247 of the acts amendatory thereof, or as to whether plaintiff at any time was or is a corporation by virtue of an act of said Parliament, or as to whether plaintiff at any time was or is at all a corporation.

The defendant has no knowledge or information sufficient to form a belief as to whether the persons in the amended complaint mentioned, or as to whether any persons, on the 30th day of April, 1880, or at any time, in pursuance of any provisions of the said alleged companies act or of the provisions of any act of said Parliament or at all made or entered into or executed any memorandum of association entitled "A memorandum of association of the Oregonian Railway Company, Limited," or as to whether any memorandum of association was at all made, executed, or entered into at any time in words and figures or effect, as recited and set forth in said amended complaint.

That defendant has no knowledge or information sufficient to form a belief as to whether the persons in the said amended complaint mentioned, or as to whether any persons on the 30th day of April, 1880, or at any time, in pursuance of any provisions of the said alleged or of any act of the said Parliament or at all made or entered into or executed any articles of association, or delivered any articles of association to the registrar of the joint-stock companies as required by section 17 of said alleged act or otherwise, or as to whether such alleged registrar did at any time retain or register any memorandum or articles of association or certify the Oregonian Railway Company, Limited, to be incorporated or to be limited or as to whether any articles of association were at any time made, executed, or entered into in words or figures or effect as set forth in said amended complaint.

That defendant denies that plaintiff became or is vested with the rights, powers, privileges, or franchises to build, construct, reconstruct, divert, equip, own, operate, lease, sell, transfer, or dispose of or purchase, or otherwise acquire, hold, operate, use, work, or deal in any railway or railways, railroad or railroads, or branch or extension thereof, or telegraph or telephone lines, warehouse or warehouses, or building or buildings for receiving or storing grain or other produce in the State of Oregon, California, or Nevada, or in the Territories of Washington or Idaho, or of carrying passengers or freight in either of said States or Territories; and that defendant has no knowledge or information sufficient to form a belief as to whether said plaintiff became or is an incorporated company, or had or has any of the other rights, powers, privileges, or franchises mentioned or described in said alleged memorandum or articles of association.

That defendant has no knowledge or information sufficient to form a belief as to whether plaintiff has its or any registered office in Dundee, in Scotland, or elsewhere, or transacts business in the State of

Oregon, or has complied with the laws of said State for the regulation of foreign corporations doing business therein, or with the foreign laws as set out in said complaint or has complied with any foreign laws so as to entitle or authorize it to transact business in this State or elsewhere.

That defendant has no knowledge or information sufficient to form a belief as to whether the plaintiff owns a railroad in the State of Oregon.

That defendant admits that it is, and was during the times in the complaint mentioned, a corporation duly incorporated under the laws of the State of Oregon; but defendant denies that it ever had or has the power, right, or franchise to purchase or lease any railroad or railroads in the State of Oregon.

248 That defendant denies that at any time plaintiff demised unto it the railway or railroad in the complaint mentioned, and defendant alleges that about the first day of August, 1881, the president and assistant secretary of the defendant signed an instrument in writing and affixed thereto defendant's corporate seal, which instrument was in its terms such an indenture of lease as is described in the amended complaint, and is, in fact, the instrument so described, but defendant denies that either plaintiff or defendant was at any time authorized to enter into said or any indenture of leasing, and defendant alleges that both the plaintiff and the defendant were without the power or authority to enter into such contract; that neither the president nor secretary of defendant had authority to execute for or on behalf of defendant such or any indenture of lease; that the State of Oregon did not authorize or consent to such contract or leasing or to any leasing by the plaintiff or taking in lease of the defendant of said railway; that the stockholders of defendant did not at any time assent thereto, nor did a majority of them do so, and that the said pretended agreement was unauthorized and void.

That it is true defendant, upon the execution as aforesaid of said pretended lease, entered into possession of said road, and so continued to the 15th day of May, A. D. 1884, but defendant denies that since said last-named date it has been or now is in possession of the same under or in pursuance of the said pretended lease or otherwise than at the special request of plaintiff for the accommodation of plaintiff and solely to prevent losses which might otherwise result to plaintiff from discontinuing the operation of such road in accordance with the terms of a written memorandum of agreement entered into on said day by the defendant through its president and by the plaintiff through Edmund Robertson, its attorney-in-fact, which memorandum of agreement is set forth in the complaint.

And defendant alleges that at all times since the said tender of possession by defendant to plaintiff it has had and now has possession of said railway and property in said instrument pretended to be demised solely in pursuance of the said agreement of May 15th, 1884.

That defendant denies that any sum of money is unpaid and due plaintiff from defendant, and it alleges that it has fully paid the

rental provided for in said pretended lease for the time during which it held possession of said railway under the same, being for the term ending on said May 15th, 1884.

That defendant denies that at the time of tendering and offering to restore said property the same was not in equally good condition as to repair, equipment, or value as when received by defendant.

Wherefore defendant prays judgment against plaintiff for its costs and disbursements herein.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

STATE OF OREGON, } ss:
County of Multnomah, }

I, Theodore Wygant, being first duly sworn, say that I am secretary of the defendant above named; that I have read the foregoing answer, and the same is true as I verily believe.

THEODORE WYGANT.

Subscribed and sworn to before me this 15th day of September, A. D. 1884.

W. T. HUME,
[SEAL.] *Notary Public in and for Oregon.*

Endorsed: Filed September 16, 1884. R. H. Lamson, clerk.

249 And afterwards, to wit, on the 17th day of September, 1884, there was duly filed in said court a demurrer to amended answer in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

Now comes the plaintiff above named, by and through its attorneys, Whalley, Northup & Deady, and demurs to the amended answer to the amended complaint filed herein on the 16th day of September, 1884, for the reason that the said amended answer does not constitute a defense to the action.

WHALLEY, NORTHUP & DEADY AND
W. B. GILBERT,
Attorneys for Plaintiff.

Service of a copy of the foregoing demurrer is hereby accepted and acknowledged this 16th day of September, 1884.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

We, the undersigned, hereby certify that we have examined the

foregoing demurrer and deem that the same is well taken in point of law.

WHALLEY, NORTHUP & DEADY.

Endorsed: Filed September 17, 1884. R. H. Lamson, clerk.

And afterwards, to wit, on the 17th day of September, 1884, there was duly filed in said court a stipulation in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

It is hereby stipulated and agreed by and between the parties to this action, by and through their respective attorneys, that the demurrer filed herein to the amended answer filed herein, the court consenting, shall be heard on the seventh day of October, 1884.

W. B. GILBERT AND WHALLEY,
NORTHUP & DEADY,
Attorneys for Plaintiff.
DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

Endorsed: Filed September 17th, 1884. R. H. Lamson, clerk, by G. G. Gammans, deputy.

And afterwards, to wit, on the 24th day of September, 1884, there was duly filed in said court a notice in words and figures as follows, to wit:

250 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

To the above-named defendant corporation and to Messrs. Dolph, Bellinger, Mallory & Simon, its attorneys:

Please take notice that on Wednesday, the 24th day of September, A. D. 1884, at the hour of 10 o'clock a. m. of said day, or as soon thereafter as application can be heard, the above-named plaintiff will, by its attorneys, undersigned, apply to the clerk of the above-named court, at his office, in the city of Portland, in the district of Oregon, for the issuance by him of a commission to some proper person in Dundee, Scotland, in the United Kingdom of Great Britain, to be chosen by said clerk, in the want of the parties not

agreeing on the person to whom said commission shall issue, to take on behalf of the plaintiff herein the testimony by deposition of the following-named witnesses, namely: Thomas Thornton, solicitor, of Dundee, Scotland; David Ferguson, secretary Oregonian Railway Company, Limited, residing at Dundee, Scotland, and John J. Reid, registrar of joint-stock companies, residing at Edinburg, Scotland; said testimony, when taken, to be read and used on the trial of this cause on behalf of the plaintiff; all or either of them to be examined for the plaintiff upon the direct interrogatories to be attached to said commission, and such cross-interrogatories as you may prepare to be attached by said clerk.

Very respectfully yours,

NORTHUP & GILBERT AND
J. W. WHALLEY,
Attorneys for Plaintiff.

DISTRICT OF OREGON, *ss:*

Service of the foregoing notice is hereby accepted, at Portland, in said district, this the 19th day of September, A. D. 1884, and all further service is hereby waived.

DOLPH, BELLINGER, MALLORY & SIMON,
Defendant's Attorneys.

Endorsed: Filed September 24, 1884. R. H. Lamson, clerk.

And afterwards, to wit, on the 29th day of September, 1884, there was duly filed in said court a notice in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

To the above-named defendant and to Messrs. Dolph, Bellinger, Mallory & Simon, its attorneys:

Please take notice that on Monday, the 6th day of October, 1884, or as soon thereafter as counsel can be heard, at the court-room of the above-entitled court, at Portland, in the district of Oregon, at the hour of ten o'clock a. m. of said 6th day of October, 1884, the above-named plaintiff will, by its counsel, make an application to
Hon. Matthew P. Deady, judge of said court, to settle the
251 interrogatories to be addressed to the witnesses, Thomas Thornton, John J. Reed, and Daniel Ferguson, and to be attached to the commission allowed herein.

Dated this September 29, 1884.

NORTHUP & GILBERT & J. W. WHALLEY,
Attorneys for Plaintiff.

Service of the foregoing notice, by a duly certified copy, accepted at Portland, in said county and district, this 29th day of September, A. D. 1884.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for the Defendant Above.

Endorsed: Filed September 29, 1884. R. H. Lamson, clerk.

And afterwards, to wit, on Wednesday, the 8th day of October, 1884, the same being the 3d judicial day of the regular October term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1035.

OCTOBER 8, 1884.

This cause having heretofore been heard on the demurrer to the amended answer herein and argued by Mr. John W. Whalley and Mr. William B. Gilbert, of counsel for plaintiff, and by Mr. Cyrus A. Dolph and Mr. Charles B. Bellinger, of counsel for the defendant, and taken under advisement by the court, and now, at this day, the court being fully advised in the premises, it is ordered that said demurrer be, and the same is hereby, overruled; and upon motion of said plaintiff, it is ordered that it be, and it hereby is, allowed to file a motion to strike out the amended answer herein as frivolous; and, upon motion of said defendant, it is ordered that it have until the eighteenth instant to amend or withdraw said answer.

And afterwards, to wit, on the 14th day of October, 1884, there was duly filed in said court a motion in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

And now comes the plaintiff above named, by its attorneys, and upon leave of the court for that purpose first had and obtained, moves the court upon the pleadings and record in this cause to strike out the last amended answer of the defendant herein filed for the reasons following:

First. Said last amended answer waives all other answers in said

cause and said last amended answer is frivolous in that it raises no material issue nor does it tender any material issue.

J. W. WHALLEY AND NORTHUP & GILBERT,
Attorneys for Plaintiff.

252 Due acceptance and service of a certified copy of the foregoing motion is hereby acknowledged on this 13th day of October, 1884.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

Endorsed: Filed October 14, 1884. R. H. Lamson, clerk, by G. G. Gammans, deputy clerk.

And afterwards, to wit, on the 18th day of October, 1884, there was duly filed in said court a second amended answer in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY.

The defendant answers to the amended complaint—

That it denies that the plaintiff, pretending to be the Oregonian Railway Company, Limited, was at any time or is a corporation created or existing under or by virtue of any act of Parliament of the United Kingdom of Great Britain and Ireland entitled "An act for the incorporation, regulation, and winding up of trading companies and other associations," dated and passed August 7, 1862, and of the acts amendatory thereof, or that it was at any time an incorporation by virtue of any act of said Parliament or is at all an incorporation.

The defendant admits that the several sections in the amended complaint mentioned of that certain act of said Parliament therein referred to contain the provisions recited in said complaint, and that it alleges that there is no other or further provision of the said act or of any act of said Parliament or law of said kingdom relating to the powers of corporations created or existing under the laws of said kingdom; that the provisions so recited comprise all the provisions of the laws of said kingdom in respect to the powers or authority of corporations created or existing under the laws of said kingdom; that said laws do not confer upon the plaintiff any power or authority to lease its said railroad property or franchises.

That defendant has no knowledge or information sufficient to form a belief as to whether the persons in the amended complaint mentioned, or as to whether any persons at any time, in pursuance of any provision of said companies act, or of any act of said Parliament or at all, made or entered into or executed any memorandum of association entitled "A memorandum of the association of the

Oregonian Railway Company, Limited," or as to whether any memorandum of association was at all made, executed, or entered into at any time, in words or figures or effect, as set forth in said amended complaint.

That defendant has no knowledge or information sufficient to form a belief as to whether the persons in the said amended complaint mentioned, or as to whether any persons at any time, in pursuance of any provision of the said alleged or of any act of the said Parliament or at all made or entered into or executed any articles of association or delivered any such articles to the registrar of joint stock companies, as required by section 17 of said alleged act, or otherwise, or as to whether such registrar did at any time
253 retain or register any memorandum or articles of association or certified the said Oregonian Railway Company, Limited, to be incorporated or to be limited or as to whether any articles of association were at any time made, executed, or entered into in words or figures or effect, as set forth in said amended complaint, or as to whether the pretended memorandum or articles of association of the said defendant are as set forth in said amended complaint.

That defendant denies that plaintiff became or is vested with the rights, powers, privileges or franchises to build, construct, reconstruct, divert, equip, own, operate, lease, sell, transfer, or dispose of or purchase or otherwise acquire, hold, operate, use, work or deal in any railway or railways, railroad or railroads, or branch or extension thereof, or telegraph or telephone lines, warehouse or warehouses or building for receiving or storing grain or other produce in the States of Oregon, California, or Nevada, or in the Territories of Washington or Idaho, or of the carrying — passengers or freight in either of said States or Territories, and that defendant has no knowledge or information sufficient to form a belief as to whether said plaintiff has any registered office at Dundee, in Scotland, or elsewhere, or transacts business in the State of Oregon or has complied with the laws of said State for the regulation of foreign corporations doing business therein, or with the foreign laws as set out in said complaint or with any foreign laws.

That defendant denies that the plaintiff became or is an incorporated company, or had or has any of the rights, powers, privileges, or franchises mentioned in said alleged memorandum or articles of association or is entitled or authorized to transact business in this State or elsewhere or owns a railroad in said State.

That defendant admits that it is and was during the times in the complaint mentioned an incorporation duly incorporated under the laws of the State of Oregon, but denies that it ever had or has the power or right or franchise to purchase or lease any railroad in the State of Oregon.

That defendant denies that at any time plaintiff demised unto it the railway or railroad in the complaint mentioned, but alleges that about the first day of August, 1881, the president and assistant secretary of defendant signed the paper and writing relied upon by plaintiff as a lease; that neither of said officers of defendant had au-

thority to execute on behalf of defendant such writing or any indenture of lease; that neither plaintiff nor defendant was at any time empowered or authorized to execute such writing or to enter into any indenture of leasing; that the State of Oregon did not authorize or consent to such or any contract of leasing by plaintiff or taking in lease by defendant; that no special or other law has at any time been enacted by said State conferring such authority on either of the parties hereto, or purporting so to do or relating thereto; that the stockholders of defendant did not at any time authorize or assent to such or any contract of leasing and the said pretended agreement was and is unauthorized and void.

That it is true defendant upon the execution, as aforesaid, of said writing entered into possession of said road and so continued to the 15th day of May, 1884, but defendant denies that since said time it has been or now is in possession thereof under or in pursuance of said writing or pretended lease or otherwise than at the special request of plaintiff for its accommodation and solely to prevent losses which might otherwise result to plaintiff from discontinuing the operation of such road and in accordance with the terms of the written memorandum of agreement between the defendant's president and Edmund Robertson, as attorney-in-fact for plaintiff, which agreement is set forth in the complaint.

That at all times since the said tender of possession by de-
254 fendant to plaintiff it has had and now has possession of said railroad property pretended to be demised solely in pursuance of the said agreement of May 15, 1884.

That defendant denies that any sum of money whatever is unpaid or due plaintiff from defendant, and it alleges that it has fully paid the rental provided for in said pretended lease for the time during which it held possession of said railroad and railroad property under the same, being for the term ending May 15, 1884.

That defendant denies that at the time of tendering and offering to restore said property the same was not in equally good condition as to repair, equipment, or value as when received by plaintiff.

Wherefore defendant prays judgment against plaintiff for its costs and disbursements herein.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, Theodore Wygant, being duly sworn, say that I am secretary of the defendant and that I believe the foregoing amended answer to be true.

THEODORE WYGANT.

Subscribed and sworn to before me this 17th day of October, 1884.

[SEAL.]

J. SILVERSTONE,
Notary Public in and for Oregon.

DISTRICT OF OREGON, *ss:*

Service of the within amended answer in the above-entitled cause upon me as one of the plaintiff's attorneys within this district is hereby acknowledged this 18th day of October, 1884.

W. B. GILBERT,
Of Attorneys for Plaintiff.

Endorsed: Filed October 18, 1884. R. H. Lamson, clerk, by G. G. Gammans, deputy.

And afterwards, to wit, on the 24th day of October, 1884, there was duly filed in said court a motion in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

And now comes the plaintiff herein by its attorneys and moves the above-entitled court to strike out the amended answer of the defendant last filed in this cause and thereupon to grant judgment in favor of plaintiff as prayed for in the amended complaint herein for the reason that said last-amended complaint is frivolous and immaterial.

H. H. NORTHUP, W. B. GILBERT &
J. W. WHALLEY,
Attorneys for Plaintiff.

Due service of the foregoing motion is hereby admitted to
255 have been made on the undersigned by the delivery of a true copy thereof to them, at Portland, Multnomah county, Oregon, on this 24th day of October, 1884.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

Endorsed: Filed October 24, 1884. R. H. Lamson, clerk, by G. G. Gammans, deputy.

And afterwards, to wit, on the 24th day of October, 1884, there was filed in said court a notice in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

To Messrs. Dolph, Bellinger, Mallory & Simon.

GENTLEMEN: You will please take notice that on Wednesday, the

29th day of October, 1884, at the hour of 10 o'clock a. m. of said day, or as soon thereafter as application can be heard, the above-named plaintiff will, by the undersigned, its attorneys, apply to the above-entitled court to appoint a day certain in which it will hear argument on the motion to strike out the answer of the above-named defendant in the above-entitled suit upon —, and thereupon to grant judgment — the ground that it is frivolous, now on file in the office of the clerk of said court.

Respectfully,

J. W. WHALLEY,
Of Counsel for Plaintiff.

Due service of the foregoing notice is hereby admitted to have been made on the undersigned by the delivery of a true copy thereof to them, at Portland, Multnomah county, Oregon, this 24th day of October, 1884.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

Endorsed: Filed October 24th, 1884. R. H. Lamson, clerk, by G. G. Gammans, deputy clerk.

And afterwards, to wit, on the 7th day of November, 1884, there was duly filed in said court a notice in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

To The Oregonian Railway Company, Limited, defendant above named, and to Messrs. Whalley, Northup & Deady and W. B. Gilbert, its attorneys:

You will please take notice that on Monday, the 10th day of November, 1884, upon the coming in of the court, defendant will move for leave to amend its answer to the amended complaint
256 herein filed on the 18th day of October, 1884; that the amendments proposed are incorporated in the engrossed copy of amended answer proposed to be filed and herewith served.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

Due service of the within notice for leave to amend is hereby accepted, within Multnomah county, State of Oregon, this the 7th day of November, 1884.

J. W. WHALLEY,
Of Attorneys for Plaintiff.

Endorsed: Filed November 7, 1884. R. H. Lamson, clerk, by G. G. Gammans, deputy.

And afterwards, to wit, on Monday, the 1st day of December, 1884, the same being the 26th judicial day of the regular October term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant. } No. 1035.

DECEMBER 1, 1884.

This cause having herebefore been heard upon motion of plaintiff to strike out the second amended answer to the amended complaint herein as frivolous, and for judgment, and upon motion of the defendant for leave to file its third amended answer to said amended complaint, and argued by Mr. John W. Whalley, of counsel for plaintiff, and by Mr. Charles B. Bellinger, of counsel for defendant, and taken under advisement by the court, and now the court being fully advised in the premises, it is ordered that the said motion to strike out and for judgment be, and the same is hereby, denied, and that the said motion for leave to file a third amended answer be, and is hereby, allowed, which answer is now filed.

And afterwards, to wit, on the 31st day of December, 1884, there was duly filed in said court a third amended answer in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

The defendant answers to the amended complaint—

That it denies that the plaintiff, pretending to be the Oregonian Railway Company, Limited, was at any time or is a corporation created or existing under or by virtue of any act of Parliament of the United Kingdom of Great Britain and Ireland entitled "An act for the incorporation, regulation and winding up of trading companies and other associations," dated and passed August 7, 1862, and of the acts amendatory thereof, or that it was an incorporation at any time by virtue of any act of said Parliament, or is at all an incorporation.

257 The defendant admits that the several sections in the amended complaint mentioned of that certain act of said Parliament therein referred to contain the provisions recited in said complaint, and that it alleges that there is no other or further pro-

vision of the said act or of any act of said Parliament or law of said kingdom relating to the powers of corporations created or existing under the laws of said kingdom; that the provisions so recited comprise all the provisions of the laws of said kingdom in respect to the powers or authority of corporations created or existing under the laws of said kingdom; that said laws do not confer upon the plaintiff any power or authority to lease its said railroad property or franchises.

That defendant has no knowledge or information sufficient to form a belief as to whether the persons in the amended complaint mentioned or as to whether any persons at any time, in pursuance of any provision of said companies act or of any act of said Parliament or at all, made or entered into or executed any memorandum of association entitled "A memorandum of the association of the Oregonian Railway Company, Limited," or as to whether any memorandum of association was at all made, executed, or entered into at any time in words or figures or effect as set forth in said amended complaint.

That defendant has no knowledge or information sufficient to form a belief as to whether the persons in the said amended complaint mentioned or as to whether any persons at any time, in pursuance of any provision of the said alleged or of any act of the said Parliament or at all, made or entered into or executed any articles of association or delivered any such articles to the registrar of joint-stock companies, as required by section 17 of said alleged act or otherwise, or as to whether such registrar did at any time retain or register any memorandum or articles of association or certified the said Oregonian Railway Company, Limited, to be incorporated or to be limited, or as to whether any articles of association were at any time made, executed, or entered into in words or figures or effect as set forth in said amended complaint, or as to whether the pretended memorandum or articles of association of said defendant are as set forth in said amended complaint.

That defendant denies that plaintiff became or is vested with the rights, powers, privileges, or franchises to build, construct, reconstruct, divert, equip, own, operate, lease, sell, transfer, or dispose of, or purchase or otherwise acquire, hold, operate, use, work, or deal in any railway or railways, railroad or railroads, or branch or extension thereof, or telegraph or telephone lines, warehouse or warehouses or building for receiving or storing grain or other produce in the States of Oregon, California, or Nevada, or in the Territories of Washington or Idaho, or of the carrying passengers or freight in either of said States or Territories; and that defendant has no knowledge or information sufficient to form a belief as to whether said plaintiff has any registered office at Dundee, in Scotland, or elsewhere, or transacts business in the State of Oregon, or has complied with the laws of said State for the regulation of foreign corporations doing business therein or with the foreign laws as set out in said complaint or with any foreign laws.

That defendant denies that plaintiff became or is an incorporated company or had or has any of the rights, powers, privileges, or

franchises mentioned in said alleged memorandum of articles of association, or entitled or authorized to transact business in this State or elsewhere, or owns a railroad in said State.

That defendant admits that it is and was during the times in the complaint mentioned a corporation duly incorporated under the laws of the State of Oregon, but denies that it ever had or has the power or right or franchise to purchase or lease any railroad in the State of Oregon.

258 That defendant denies that at any time plaintiff demised unto it the railway or railroads in the complaint mentioned, but alleges that about the first day of August, 1881, the president and assistant secretary of defendant signed the paper and writing relied upon by plaintiff as a lease, and affixed thereto defendant's corporate seal; that neither of said officers of defendant had authority to execute on behalf of defendant such writing or any indenture of lease; that neither plaintiff nor defendant was at any time empowered or authorized to execute such writing, or to enter into any indenture of leasing; that the State of Oregon did not authorize or consent to such or any contract of leasing by plaintiff or taking in lease by defendant; that no special or other law has at any time been enacted by said State conferring such authority on either of the parties hereto or purporting so to do or relating thereto; that the stockholders of defendant did not at any time authorize or assent to such or any contract of leasing, and the said pretended agreement was and is unauthorized and void.

That it is true defendant, upon the execution as aforesaid of said writing, entered into possession of said road and so continued to the 15th day of May, 1884, but defendant denies that since said time it has been or now is in possession thereof under or in pursuance of said writing or pretended lease or otherwise than at the special request of plaintiff for its accommodation and solely to prevent losses to plaintiff from discontinuing the operation of such road and in accordance with the terms of the written memorandum of agreement between the defendant's president and Edmund Robertson, as attorney-in-fact for plaintiff, which agreement is set forth in the complaint.

That at all times since the said tender of possession by defendant to plaintiff it has had and now has possession of said railroad property pretended to be demised solely in pursuance of the said agreement of May 15, 1884.

That defendant denies that any sum of money whatever is unpaid or due plaintiff from defendant, and it alleges that it has fully paid the rental provided for in said pretended lease for the time during which it held possession of said railroad and railroad property under the same, being for the term ending May 15, 1884.

That defendant denies that at the time of tendering and offering to restore said property the same was not in equally good condition as to repair, equipment, or value as when received by plaintiff.

For a further and separate defense herein defendant alleges—

First. That the railroad or railroads which the defendant was and is organized to construct and operate and the termini of which

were specified in the articles of association ran east from the city of Portland, in the State of Oregon, and between points and places in the eastern part of said State, and did not embrace the railroad mentioned and purported to be demised in said lease nor any railroad running south from the said city of Portland or between points or places south of said city, and that the said railroad mentioned in said lease and purporting to be demised thereby is a wholly different road, forming no part of and having no near connection with or relation to the road or systems of roads the termini of which are mentioned in any of the articles of association of said O. R. & N. Company, defendant herein.

Second. That prior to the execution of the pretended indenture of lease the whole of the capital of the defendant had been contributed and applied in the construction and equipment of a railroad or railroads the termini of which was specified in the articles of association, and which were wholly different from and independent of the railroad mentioned in said pretended lease and
259 purported to be demised thereby, and had no near connection with or relation to the railroad last above mentioned, and that the said pretended indenture of lease has never in any manner been authorized or assented to by the stockholders of the defendant, and that the act of defendant's officers in seeking to bind defendant to such pretended indenture of lease was a wholly unauthorized attempt to divert and subject the capital of defendant contributed as above mentioned to a wholly new object and enterprise not contemplated when said capital was contributed and expended.

Wherefore defendant prays judgment against plaintiff for its costs and disbursements herein.

J. N. DOLPH AND
DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

STATE OF OREGON,)
County of Multnomah.)

I, Theodore Wygant, being first duly sworn, say I am the secretary of the defendant above named, and that I believe the foregoing answer to be true.

THEODORE WYGANT.

Subscribed and sworn to before me this 11th day of November, A. D. 1884.

[SEAL.] J. SILVERSTONE,
Notary Public in and for Oregon.

We hereby acknowledge service of a copy of the foregoing answer upon us, at Portland, Oregon, this 11th day of November, 1884.

Endorsed: Filed December 1, 1884. R. H. Lamson, clerk, by G. G. Gammans, deputy.

And afterwards, to wit, on the 5th day of December, 1884, there was duly filed in said court a demurrer in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY.

And now comes the said plaintiff, by its attorneys, and demurs to so much of the last amended answer herein as pleads to or denies the corporate existence, due organization of plaintiff as a corporation, or facts relating to the organization of plaintiff as a corporation, or which pleads to or questions or denies compliance by plaintiff with foreign or domestic laws, or which attempts to deny the demise alleged in the amended complaint by plaintiff to defendant, and also to so much of said last amended answer as pleads to or denies or attempts to plead to or deny or question the powers, rights, privileges, or franchise or ownership of plaintiff alleged in the amended complaint herein, for the reason that the said defendant ought not to be allowed or heard to say or allege that the plaintiff is not a corporatien or has no power to make the contract herein sued on or to make any denials contrary to defendant's own acknowledgment and deed of about August 1, 1881, as appears by the said amended complaint therein and admitted by the last amended answer filed in this cause.

2. And plaintiff also demurs to so much of said last amended answer as by plea attempts to set up want of power and
260 authority in defendant corporation and its officers to enter into the contract alleged in the amended complaint, and for cause of demurrer thereto says that upon the face of the matter alleged in said plea it appears that the same does not constitute a defense or counter-claim to said action.

3. And plaintiff demurs to all the supposed answer and defense following the words in said last amended answer "For a further and separate defense herein defendant alleges," for the reason that the new matter therein set up does not constitute a defense or counter-claim to this action.

W. B. GILBERT AND
WHALLEY, NORTHUP & DEADY,
Attorneys for Plaintiff.

STATE OF OREGON, } ss:
County of Multnomah, }

Service of a copy of the foregoing demurrer upon us is hereby acknowledged, at Portland, in said district, this the 5th day of December, A. D. 1884, and all other service is hereby waived.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for the Defendant, The Oregon Railway and Navigation Company,
By W. T. HUME.

Endorsed: Filed December 5, 1884. R. H. Lamson, clerk, by G. G. Gammans, deputy.

And afterwards, to wit, on the 5th day of December, 1884, there was duly filed in said court a motion in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

And now comes the said plaintiff, by its attorneys, and moves the court to strike out all that part of the last amended answer herein filed commencing with the words "That it is true defendant, upon the execution," down to and inclusive of the words "the said agreement of May 15th, 1884," for the reason that each and every allegation and denial therein contained is immaterial and irrelevant and the whole thereof frivolous.

And plaintiff further moves the court to strike out of said last amended answer all that part thereof following the words "said agreement of May 15th, 1884," down to and inclusive of the words "as when received by plaintiff," for the reason that the same is wholly frivolous, immaterial, and irrelevant.

And plaintiff further moves to strike out the following part of said last amended answer, commencing with the words, on the sixth page thereof, "That defendant admits that it is" down to and inclusive of the words "in the State of Oregon," for the reasons that the matter of admission is redundant and the rest thereof sham and frivolous.

And plaintiff further moves the court to strike out the rest and residue of said last amended answer which is not in this ac-
261 tion demurred to and which is not hereinbefore moved to be stricken out for the reason that such residue is wholly immaterial and irrelevant to the issues in this cause.

W. B. GILBERT AND
WHALLEY, NORTHUP & DEADY,
Attorneys for Plaintiff.

STATE OF OREGON, *Multnomah County,* } *ss:*

Service of the foregoing motion to strike out by a copy admitted upon us, at Portland, in said district, this the 5th day of December, A. D. 1884, and all other service is hereby expressly waived.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for the Defendant, The Oregon Railway and Navigation Company,
By W. T. HUME.

Endorsed: Filed December 5, 1884. R. H. Lamson, clerk, by G. G. Gammans, deputy clerk.

And afterwards, to wit, on the 5th day of December, 1884, there was duly filed in said court a notice in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

To the above-named defendant and to Messrs. Dolph, Bellinger, Mallory & Simon, its attorneys:

Take notice that on Wednesday, the 10th day of December, 1884, at the hour of ten o'clock a. m. of said day, or as soon thereafter as counsel can be heard, the plaintiff will, by its attorneys, at the court-room of the above-entitled court, in open court move said court for an order setting down for hearing at a time certain the demurrers filed herein to the last amended answer of defendant, and also the motion to strike out parts of said last amended answer on file in this cause.

Respectfully yours,

W. B. GILBERT AND
WHALLEY, NORTHUP & DEADY,
Attorneys for Plaintiff.

Due service of a true copy of the within notice is hereby admitted to have been made on us, at Portland, Multnomah county, Oregon, on this 5th December, A. D. 1884.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant,
By W. T. HUME.

Endorsed: Filed December 5th, 1884. R. H. Lamson, clerk.

And afterwards, to wit, on Wednesday, the 18th day of March, 1885, the same being the 82d judicial day of the regular October term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in — case, to wit:

262 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant. } No. 1035.

MARCH 18, 1885.

This cause having heretofore been heard upon the demurrer to

the amended answer filed herein December 1, 1884, and upon the plaintiff's motion to strike out part of said answer, and argued by Mr. John Whalley and Mr. William B. Gilbert, of counsel for plaintiff, and by Mr. Cyrus A. Dolph and Mr. C. B. Bellinger, of counsel for defendant, and taken under advisement by the court, and now, at this day, the court being fully advised in the premises, and it appearing that the matters in said answer included in said motion to strike out are redundant and irrelevant, and that the remaining denials and defenses in said answer or any of them are not sufficient to bar said plaintiff of its rights to recover in this action, it is considered that said motion be, and the same is hereby, allowed, and that said demurrer be, and the same is hereby, sustained, and that said plaintiff, The Oregonian Railway Company, Limited, have and recover from the said defendant, The Oregon Railway and Navigation Company, the sum of sixty-eight thousand one hundred and thirty-one dollars, with legal interest, to wit, eight per centum per annum, thereon since May 15, 1884, in all the sum of seventy-two thousand seven hundred and fifteen dollars and forty-three cents, and its costs and disbursements herein, taxed at $599.17.

And afterwards, to wit, on the 23d day of March, 1885, there was duly filed in said court a cost bill in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant. } No. 1035.

Statement of disbursements claimed in the above-entitled cause, viz:

Clerk's fees	$35 10
Marshal's fees	4 72
Attorney's fees	10 00
Attorney's fees for taking three depositions at $2.50 each	7 50
Disbursements, taking depositions under commission	479 35
Printing brief	64 50
Total	$599 17

Taxed at $599.17 April 6, 1885.

R. H. LAMSON, *Clerk.*

DISTRICT OF OREGON, *ss:*

I, Paul R. Deady, being duly sworn, say that I am one of the attorneys in the above-entitled cause; that the costs and dis-
263 bursements set forth above have been necessarily incurred in the prosecution of this suit, and that the plaintiff is entitled to recover the same from the defendant.

PAUL R. DEADY.

Subscribed and sworn to before me this March 23, 1885.

R. H. LAMSON, *Clerk.*

Endorsed: Filed March 23, 1885. R. H. Lamson, clerk, by G. G. Gammans, deputy.

And afterwards, to wit, on the 26th day of March, 1885, there was issued out of said court a writ of error in words and figures as follows, to wit:

In the Supreme Court of the United States.

THE OREGON RAILWAY AND NAVIGATION COMPANY, Plaintiff in Error,

vs.

THE OREGONIAN RAILWAY COMPANY, Limited, Defendant in Error.

THE UNITED STATES OF AMERICA, *ss:*

The President of the United States to the judges of the circuit court of the United States for the district of Oregon, Greeting:

Because in the records and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before the Honorable Matthew P. Deady, one of you, between The Oregonian Railway Company, Limited, plaintiff and defendant in error, and The Oregon Railway and Navigation Company, defendant and plaintiff in error, a manifest error hath happened, to the great damage of the said plaintiff in error, as by complaint doth appear, and we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid and in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things containing the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October, A. D. eighteen hundred and eighty-five, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being then and there inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States of America should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this March 26, 1885.

[Seal U. S. Circuit Court, Oregon.]

R. H. LAMSON,
Clerk of the Circuit Court of the United States for the District of Oregon,
By G. G. GAMMANS, *Deputy.*

Endorsed: Filed March 26, 1885. R. H. Lamson, clerk, by G. G. Gammans, deputy.

264 UNITED STATES OF AMERICA, } ss:
District of Oregon, }

To the Oregonian Railway Company, Limited, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday in October, A. D. eighteen hundred and eighty-five, pursuant to a writ of error filed in the clerk's office of the circuit court of the United States for the district of Oregon, wherein The Oregon Railway and Navigation Company is plaintiff in error and you are defendant in error, to show —, if any there be, why the judgment in the said writ of error mentioned should not be corrected and speedy justice should — be done to the parties in that behalf.

Given under my hand, at Portland, in said district, this March 26, 1885.

(Signed) MATTHEW P. DEADY,
U. S. District Judge, Oregon.

Endorsed: Filed March 26, 1885. R. H. Lamson, clerk, by G. G. Gammans, deputy.

STATE OF OREGON, } ss:
District of Oregon, }

Service of the foregoing citation accepted, at Portland, in said State and district, this the 26th day of March, A. D. 1885, by delivering to us a true copy thereof in said district on said day and date.

NORTHUP & GILBERT,
Attorneys for the Within-Named Plaintiff.

THE UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, R. H. Lamson, clerk of the United States circuit court for the district of Oregon, do hereby certify that the foregoing copy of judgment-roll in cause No. 1035, Oregonian Railway Company, Limited, *vs.* The Oregon Railway and Navigation Company, has been by me compared with the original, and that it is a correct transcript therefrom and of the whole of such original as the same appears of record and on file at my office and in my custody.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at Portland, in said district, this 8th day of May, 1886.

[Seal U. S. Circuit Court, Oregon.]

R. H. LAMSON, *Clerk,*
By R. B. LAMSON,
Deputy Clerk.

265 Plaintiff also offered in evidence a duly certified transcript of the judgment-roll No. 983, in an action numbered 1147 in this court, wherein the plaintiff herein was plaintiff and the defendant herein was defendant, and wherein said plaintiff had judgment

on August 18th, 1885, for the sum of $4,628.32, exclusive of interest, and costs. Defendant objected to the introduction of said transcript on the ground that the same was immaterial, but the court overruled the objection; to which ruling defendant duly excepted, which exception was allowed by the court. Thereupon said transcript was admitted in evidence, and is as follows:

266 No. 1120.

In the Circuit Court of the United States for the District of Oregon.

Transcript of Judgment-Roll No. 983.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY.

Register No. 1147.

Original endorsed: Filed September 12, 1885. R. H. Lamson, clerk, by R. B. Lamson, deputy clerk.

267 (Index omitted here. See general index.)

268 In the Circuit Court of the United States for the District of Oregon. April Term, 1885.

Be it remembered that on the 25th day of June, 1885, there was duly filed in the circuit court of the United States for the district of Oregon a complaint in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.
Action at Law. No. 1147.

The plaintiff complains of the defendant, and for cause of action alleges—

1. That at all the times herein stated the plaintiff was and now is a foreign corporation, duly organized under the laws of Great Britain and the acts of Parliament commonly known as "the companies act," and was and is a citizen of Great Britain.

That the defendant at all the times herein stated was and is a corporation duly organized under the general incorporation laws of the State of Oregon, and is a citizen of Oregon.

That under the laws of its creation and its memorandum and articles of association filed thereunder and under the laws of the State of Oregon the plaintiff had and has the right and power to

construct, own, operate, and lease a certain railway in the State of Oregon commonly known as "the narrow-gauge railway," and being the railway now owned by said plaintiff in said State of Oregon, and which railway in and by the lease hereinafter mentioned is called "the existing railway."

That the defendant is a corporation having power, under and by virtue of its articles of incorporation, among other things, to operate and lease any railway in Oregon.

That on or about the 1st day of August, A. D. 1881, the said plaintiff and said defendant, in pursuance of resolutions duly passed by each and both of their respective boards of directors, duly made, executed, acknowledged, and delivered, under their several and respective corporate seals, a certain indenture of lease, in which and whereby the plaintiff leased to said defendant, in consideration of a certain sum of money then paid and of certain rents therein reserved and of the covenants and agreements of the said defendant, the railroad, rolling stock, locomotives, and appurtenances then owned by said plaintiff in Oregon, and in said lease called "the existing railway," for the term of ninety-six years next thereafter ensuing, and said defendant covenanted to pay the rents reserved in and by said lease in advance for said term, in equal semi-annual payments, on the 15th day of May and the 11th day of November in each year.

That in and by said lease the defendant, as part of the consideration aforesaid of said demise, did further covenant, promise, and agree to and with plaintiff that defendant would pay to plaintiff yearly and every year during said term, and at the same time and place as the rental aforesaid, the sum of six hundred pounds sterling money for the purpose of enabling the plaintiff to keep up its corporate organization and to pay its officers and office expenses.

That under said covenant and agreement there was due to plaintiff from the defendant on the 15th day of May, A. D. 1884, the sum of three hundred pounds sterling money, which is equivalent to the sum of $1,459.95 in lawful money of the United States.

That said sum has not been paid or any part thereof, and the same ever since said 15th day of May, A. D. 1884, has been and now is due and payable, with lawful interest from said date.

2. And the plaintiff, for another cause of action, alleges—

That at all of the times herein stated the plaintiff was and now is a foreign corporation, duly organized under the laws of Great Britain and the acts of Parliament commonly known as "the companies act," and was and is a citizen of Great Britain.

269 That the defendant at all the times herein stated was and is a corporation duly organized under the general incorporation laws of the State of Oregon, and is a citizen of Oregon.

That under the laws of its creation and its memorandum and articles of association filed thereunder and under the laws of the State of Oregon the plaintiff had and has the right and power to construct, own, operate, and lease a certain railway in the State of Oregon commonly known as "the narrow-gauge railway," and being the railway now owned by said plaintiff in said State of Ore-

gon, and which railway in and by the lease hereinafter mentioned is called "the existing railway."

That the defendant is a corporation having power, under and by virtue of its articles of incorporation, among other things, to operate and lease any railway in Oregon.

That on or about the 1st day of August, A. D. 1881, the said plaintiff and said defendant, in pursuance of resolutions duly passed by each and both of their respective boards of directors, duly made, executed, and delivered, under their several and respective seals, and duly acknowledged a certain indenture of lease, in which and whereby the plaintiff leased to said defendant, in consideration of a certain sum of money then paid and of certain rents reserved therein and of the covenants and agreements of the said defendant, the railroad, rolling stock, locomotives, and appurtenances then owned by said plaintiff in Oregon, and in said lease called "the existing railway," for the term of ninety-six years next thereafter ensuing; and said defendant covenanted to pay the rents reserved in and by said lease in advance for said term, in equal semi-annual payments, on the 15th day of May and the 11th day of November in each year.

That in and by said lease the defendant, as a part of the consideration aforesaid of said demise, did further covenant, promise, and agree to and with plaintiff that defendant would pay to plaintiff yearly and every year during said term, and at the same time and place as the rental aforesaid, the sum of six hundred pounds sterling money for the purpose of enabling the plaintiff to keep up its corporate organization and to pay its officers and office expenses.

That under said covenant and agreement there was due to plaintiff from defendant on the 11th day of November, A. D. 1884, the sum of three hundred pounds sterling money, which is equivalent to the sum of $1,459.95 in lawful money of the United States.

That said sum has not been paid or any part thereof, and the same, ever since said 11th day of November, A. D. 1884, has been and now is due and payable, with lawful interest from said date.

3. And plaintiff, for another cause of action, alleges—

That at all of the times herein stated the plaintiff was and now is a foreign corporation, duly organized under the laws of Great Britain and the acts of Parliament commonly known as "the companies act," and was and is a citizen of Great Britain.

That the defendant at all of the times herein stated was and is a corporation duly organized under the general laws of incorporation of the State of Oregon, and is a citizen of Oregon.

That under the laws of its creation and its memorandum and articles of association filed thereunder and under the laws of the State of Oregon the plaintiff had and has the right and power to construct, own, operate, and lease a certain railway in the State of Oregon commonly known as "the narrow-gauge railway," and being the railway now owned by said plaintiff in said State of Oregon, and which railway, in and by the lease hereinafter mentioned, is called "the existing railway."

That the defendant is a corporation having power, under and by

virtue of its articles of incorporation, among other things, to operate and lease any railway in Oregon.

That on and about the 1st day of August, A. D. 1881, the said plaintiff and defendant, in pursuance of resolutions duly passed by each and both of their respective boards of directors, duly made, executed, and delivered, under their several and respective seals, and duly acknowledged a certain indenture of lease, in which and whereby the plaintiff leased to said defendant, in consideration of a certain sum of money then paid and of certain rents reserved therein, and of the covenants and agreements of the said defendant, the rolling stock, railroad, locomotives, and appurtenances then owned by said plaintiff in Oregon, and in said lease called "the existing railway," for the term of ninety-six years next thereafter ensuing; and said defendant covenanted to pay the rents reserved in and by said lease in advance for the said term, in equal semi-annual payments, on the 15th day of May and the 11th day of November in each year.

That in and by said lease the defendant, as a part of the
270 consideration aforesaid of said demise, did further covenant, promise, and agree to and with plaintiff that defendant would pay to plaintiff yearly and every year during said term, and at the same time and place as the rental aforesaid, the sum of six hundred pounds sterling for the purpose of enabling the plaintiff to keep up its corporate organization and to pay its officers and office expenses.

That under said covenant and agreement there was due to plaintiff from defendant on the 15th day of May, A. D. 1885, the sum of three hundred pounds sterling money, which is equivalent to the sum of $1,459.95 in lawful money of the United States.

That said sum has not been paid or any part thereof, and the same, ever since said 15th day of May, A. D. 1885, has been and now is due and payable, with interest from said date.

Wherefore the plaintiff prays for judgment against the defendant in the sum of $1,459.95 and interest thereon from May 15, 1884, the sum of $1,459.95 and interest thereon from November 11, 1884; the sum of $1,459.95 and interest thereon from May 15, 1885, and for the costs and disbursements of this action.

WHALLEY, BRONAUGH, NORTHUP & DEADY,
Attorneys for the Plaintiff.

UNITED STATES OF AMERICA, }
District of Oregon, } *ss.*

I, Hugh Roger, being first duly sworn, say that I have read the foregoing complaint, and that the same is true as I verily believe; that I am the agent and attorney-in-fact of the plaintiff above named, and that the reason I make this verification is that none of the officers of the plaintiff qualified to verify said complaint are now in the district of Oregon.

HUGH ROGER.

Subscribed and sworn to before me this the 25th day of June, A. D. 1885.

PAUL R. DEADY,
United States Circuit Court Commissioner.

Endorsed: Filed June 25, 1885. R. H. Lamson, clerk.

And afterwards, to wit, on the 25th day of June, 1885, there was issued out of said court a summons in words and figures as follows, to wit:

DISTRICT OF OREGON, *ss:*

I hereby certify that on the 26th day of June, 1885, at Portland, Multnomah county, in said district, I duly served the within summons upon the therein-named corporation defendant, "The Oregon Railway and Navigation Company," by exhibiting said writ to T. Wygant, secretary of the O. R. & N. Co., and by delivering to said T. Wygant, secretary, personally a true copy of said summons, duly certified to by me as United States marshal, together with a copy of the complaint in the within-entitled action, duly certified to by the clerk of the circuit court for said district.

PENUMBRA KELLY,
United States Marshal,
By C. W. FRUSH, *Deputy.*

In the Circuit Court of the United States for the Ninth Judicial Circuit, District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY.
} Summons. No. 1147.

271 The President of the United States to the Oregon Railway and Navigation Company, the above-named defendant, Greeting:

You are hereby commanded to be and appear in the above-entitled court, holden at Portland, in said district, and answer the complaint filed against you in the above-entitled action within ten days from the date of the service of this summons upon you, if served within the county of Multnomah, in said district; or if served within any other county of said district, then within thirty days from the date of such service upon you; and if you fail so to appear and answer, for want thereof the plaintiff will take judgment against you for the sum of $1,459.95 and interest thereon from May 15, 1884; the sum of $1,459.95 and interest thereon from November 11, 1884; the sum of $1,459.95 and interest thereon from May 15, 1885, and for the costs and disbursements of this action.

And this is to command you, the marshal of said district, or your deputy, to make due service and return of this summons. Hereof fail not.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, and the seal of said circuit court, affixed at Portland, in said district, this 25th day of June, 1885.

[Seal of U. S. Circuit Court, Oregon.]

R. H. LAMSON, *Clerk.*

And afterwards, to wit, on the 2d day of July, 1885, there was duly filed in said court a motion in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

Now comes the defendant and moves the court to strike out the following several portions of the complaint herein upon the grounds that such portions of said complaint are each and all immaterial, irrelevant, and redundant:

1. All that portion of said complaint beginning with the words "And the plaintiff, for another cause of action, alleges," comprising line 27 of page 2, and extending to and including the words "office expenses," in line 10 of page 4 of said complaint.

2. All that portion of said complaint beginning with and comprising line 18 of page 4 and extending to and including the words "and office expenses" comprising line 3 of page 6 of the same.

3. All that portion of said complaint beginning with line 10 of page 4 and extending to and including line 10 of page 6 thereof.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

Due service of a copy of the foregoing motion is hereby acknowledged this 2d day of July, 1885, at Portland, Oregon.

J. W. WHALLEY,
Of Attorneys for Plaintiff.

Endorsed: Filed July 2, 1885. R. H. Lamson, clerk.

And afterwards, to wit, on the 3d day of July, 1885, there was duly filed in said court a notice in words and figures as follows, to wit:

272 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

To Dolph, Bellinger, Mallory & Simon, attorneys for defendant in the above-entitled action:

You are hereby notified that on Wednesday, July 8, 1885, at 10

o'clock a. m., or as soon thereafter as such motion can be heard, the plaintiff in the above-entitled cause will move the court to set down for hearing the motion of defendant to strike out certain parts of the complaint in said section.

WHALLEY, NORTHUP, BRONAUGH & DEADY,
Attorneys for Plaintiff.

Service of this notice by certified copy is hereby acknowledged this 3d day of July, 1885.

DOLPH, BELLINGER, MALLORY & SIMON.

Endorsed: Filed July 3, 1885. R. H. Lamson, clerk.

And afterwards, to wit, on Wednesday, the 8th day of July, 1885, the same being the thirty-ninth judicial day of the regular April term of said court—present, the Honorable Mathew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1147.

JULY 8, 1885.

Now, on this day, on motion of Mr. J. W. Whalley, of counsel for plaintiff, it is ordered that the motion filed to strike out parts of the complaint herein be, and the same is hereby, set for hearing on Friday, July 10, 1885.

And afterwards, to wit, on Friday, the 10th day of July, 1885, the same being the fortieth judicial day of the regular April term of said court—present, the Honorable Mathew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1147.

JULY 10, 1885.

Now, at this day, comes the plaintiff, by Mr. E. C. Bronaugh, of counsel, and the defendant, by Mr. C. B. Bellinger, of counsel, and this case comes on to be heard upon the motion filed to strike out parts of the complaint herein, and was argued by counsel; whereupon it was ordered that said motion be, and the same is hereby, denied.

And afterwards, to wit, on Monday, the 20th day of July, 1885, the same being the forty-fourth judicial day of the regular April term of said court—present, the Honorable Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

273 In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1147.

JULY 20, 1885.

Now, at this day, comes the plaintiff, by Mr. J. W. Whalley, of counsel, and the defendant, by Mr. C. B. Bellinger, of counsel, and, on motion of said defendant, it is ordered that the defendant herein be, and he is hereby, allowed three days in which to answer.

And afterwards, to wit, on the 21st day of July, 1885, there was duly filed in said court an answer in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant. } Action at Law. No. 1147.

The defendant, for answer to the first cause of action set forth in the complaint herein, alleges—

That on the 18th day of March, 1885, this plaintiff began an action against this defendant in the circuit court of the United States for the district of Oregon to recover from this defendant the sum of $68,131, with interest and costs; that it is alleged and claimed in the complaint in said action that said sum is due from defendant to plaintiff as rental due upon the pretended lease in the complaint herein mentioned, and became so due on the 4th day of November, 1884, and that said rental is a part of the consideration for the demise in the complaint herein mentioned.

The defendant was duly served with summons in said action and made its appearance therein.

That said action was at the commencement of this action and still is pending.

Defendant, answering the second cause of action set forth in the complaint herein, alleges—

That on the 18th of March, 1885, the plaintiff began an action at law against this defendant in the circuit court of the United States

for the district of Oregon to recover the sum of $68,131, with interest; that it is alleged and claimed in the complaint in said action that said sum is due from defendant to plaintiff as rental becoming so due on the pretended lease in the complaint herein mentioned on the 11th day of November, 1884, and that said rental is a part of the consideration of the demise in the complaint herein mentioned.

That defendant was duly served with summons in said action and made its appearance therein.

That said action was at the commencement of this action and still is pending, and is to recover the said sum so alleged to be due on the said 11th of November, 1884.

Defendant, answering to the third cause of action set forth in the complaint herein, alleges—

That on the 11th day of June, 1885, the plaintiff began an action against this defendant in the circuit court of the United States for the district of Oregon to recover the sum of $68,131, with interest; that it is alleged and claimed in the complaint therein that said sum is due from defendant to plaintiff as rental becoming so due upon the pretended lease in the complaint herein mentioned on the 15th day of May, 1885, and that said rental is a part of the consideration of the demise in the complaint herein mentioned, and the said action is to recover the said sum as rental so due on the said May 15, 1885.

That the defendant was duly served with summons and appeared in said action.

That said action was at the commencement of this action and still is pending.

Wherefore defendant prays judgment for costs and disbursements herein.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

274 UNITED STATES OF AMERICA, }
District of Oregon. }

I, Theodore Wygant, being duly sworn, say that I am the secretary of the defendant, and that I believe the foregoing answer to be true.

THEODORE WYGANT.

Subscribed and sworn to before me this 20th day of July, 1885.
[SEAL.] J. SILVESTONE
Notary Public in and for Oregon.

Due service of a copy of the foregoing answer is hereby acknowleged, in the city of Portland, Oregon, this the 20th day of July, 1885.

J. W. WHALLEY,
Of Attorneys for Plaintiff.

Endorsed: Filed July 21, 1885. R. H. Lamson, clerk, by R. B. Lamson, deputy.

And afterwards, to wit, on the 21st day of July, 1885, there was duly filed in said court a demurrer in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff, *vs.* THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant. } Action at Law. No. 1147.

Now comes the above-named plaintiff, by its attorneys, and demurs to the answer to the first, second, and third causes of action in said complaint of plaintiff herein for the reason that the said answers constitute no defense to said causes of action or any of them.

WHALLEY, BRONAUGH, NORTHUP & DEADY,
Attorneys for the Plaintiff.

DISTRICT OF OREGON, *ss:*

Service of a certified copy of the above demurrer accepted at Portland, in said district, this the 21st day of July, A. D. 1885.

DOLPH, BELLINGER, MALLORY & SIMON,
Attorneys for Defendant.

Endorsed: Filed July 21, 1885. R. H. Lamson, clerk, by R. B. Lamson, deputy.

And afterwards, to wit, on the 24th day of July, 1885, there was duly filed in said court a notice in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited, Plaintiff, *vs.* THE OREGON RAILWAY AND NAVIGATION COMPANY, Defendant.

To the above-named plaintiff and Messrs. Whalley, Bronaugh, Northup & Deady, its attorneys:

You will please take notice that on Wednesday, the 29th
275 day of July, 1885, at 10 o'clock a. m., or as soon thereafter as counsel can be heard, the defendant in the above-entitled action will move the above-entitled court to set down for argument the demurrer filed by plaintiff to the defendant's answer herein.

DOLPH, BELLINGER, MALLORY & SIMON.
Attorneys for Defendant.

Endorsed: Filed July 24, 1885. R. H. Lamson, clerk.

DISTRICT OF OREGON, *ss:*

Due service of the within notice upon us, at Portland, in said district, on the 24th day of July, 1885, is hereby admitted.

J. W. WHALLEY,
Of Attorneys for Plaintiff.

And afterwards, to wit, on Wednesday, the 29th day of July, 1885, the same being the 48th judicial day of the regular April term of said court—present, the Hon. Matthew P. Deady, United States district judge, presiding—the following proceedings were had in said case, to wit:

In the Circuit Court of the United States for the District of Oregon.

THE OREGONIAN RAILWAY COMPANY, Limited,
vs.
THE OREGON RAILWAY AND NAVIGATION COMPANY. } No. 1147.

JULY 29, 1885.

Now, at this day, comes the plaintiff, by Mr. E. C. Bronaugh, of counsel, and the defendant, by Mr. Joseph Simon, of counsel, and by consent of parties the demurrer of plaintiff to the answer of defendant is submitted for decision without argument; and the court being now sufficiently advised in the premises, said demurrer is sustained; whereupon the plaintiff, by its attorneys, moves the court for judgment in its behalf as prayed for in the complaint, which motion is allowed. It is therefore considered that plaintiff do have and recover of and from the defendant the sum of four thousand six hundred and twenty-eight dollars and thirty-two cents, with interest thereon at the rate of eight per centum per annum until paid, together with the costs and disbursements of plaintiff in this cause, taxed at the sum of twenty-seven dollars and two cents.

MAY 12, 1886.

Full satisfaction of this judgment is hereby acknowledged as of the date of August 18, 1885, when it was paid.

(Signed) WHALLEY, BRONAUGH,
NORTHUP & DEADY,
Attorneys for Plaintiff.

And afterwards, to wit, on the 29th day of July, 1885, there was duly filed in said court a cost bill in words and figures as follows, to wit:

In the Circuit Court of the United States for the District of Oregon.

OREGONIAN RAILWAY COMPANY, Limited, Plaintiff,
vs.
OREGON RAILWAY AND NAVIGATION COMPANY, Defendant. } No. 1147.

Statement of disbursements claimed in the above-entitled cause, viz:

Clerk's fees	$12 30
Marshal's fees	4 72
Attorney's fee	10 00
Total	$27 02

276 THE UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, R. H. Lamson, clerk of the United States circuit court for the district of Oregon, do hereby certify that the foregoing copy of judgment-roll and of the satisfaction of the judgment in cause No. 1147, Oregonian Railway Company *vs.* Oregon Railway and Navigation Company, has been by me compared with the original, and that it is a correct transcript therefrom and of the whole of such original as the same appears of record and on file at my office and in my custody.

In testimony whereof I have hereunto set my hand and [SEAL] affixed the seal of said court, at Portland, in said district, this May 13th, 1886.

R. H. LAMSON, *Clerk,*
By R. B. LAMSON,
Deputy Clerk.

277 The plaintiff having rested its cause, the defendant, to sustain the issues on its part, offered in evidence a duly certified transcript of said judgment-roll, numbered 983, in said action between the parties hereto, numbered 1147, of which judgment the foregoing is a transcript, but the plaintiff objected to the introduction thereof on the ground that the same was immaterial, which objection was sustained by the court; to which ruling defendant duly excepted; which exception was allowed.

There was no other or further evidence offered or admitted on the trial of said cause than that contained in this bill of exceptions, and thereupon the defendant prayed that this his bill of exceptions to each and every of the foregoing rulings of the court admitting said matters and each of them in evidence may be allowed and signed, which is hereby done.

October 11, 1886.

(Signed) MATTHEW P. DEADY,
U. S. District Judge.

278 We hereby acknowledge the receipt of a copy of the foregoing bill of exceptions, at Portland, Oregon, this September 30th, 1886.

WHALLEY, BRONAUGH, NORTHUP & DEADY,
Att'ys for Pl'ff.

279 In the Circuit Court of the United States for the District of Oregon.

UNITED STATES OF AMERICA, } ss:
District of Oregon, }

I, R. H. Lamson, clerk of the circuit court of the United States for the district of Oregon, by virtue of the within writ of error and in obedience thereto, do hereby certify that the foregoing transcript of the record and proceedings had in said court in the cause of The Oregonian Railway Company, Limited, *v.* The Oregon Railway and Navigation Company is a true and complete transcript of said records and proceedings as the same remain of record and on file in said cause.

In testimony whereof I have hereunto set my hand and affixed the seal of said circuit court, at Portland, in said district, this October thirteenth, eighteen hundred and eighty-six.

[Seal United States Circuit Court, Oregon.]

R. H. LAMSON, *Clerk.*

Endorsed on cover: Oregon C. C. U. S. No. 236. The Oregon Railway and Navigation Company, plaintiff in error, *vs.* The Oregonian Railway Company (Limited). Filed October 22, 1886.

Office Supreme Court U. S.
FILED
MAR. 11 1890

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 236.

THE OREGON RAILWAY AND NAVIGATION COMPANY,
Plaintiff in Error,

vs.

THE OREGONIAN RAILWAY COMPANY, LIMITED,
Defendant in Error.

No. 237.

THE OREGON RAILWAY AND NAVIGATION COMPANY,
Plaintiff in Error,

vs.

THE OREGONIAN RAILWAY COMPANY, LIMITED,
Defendant in Error.

No. 238.

THE OREGON RAILWAY AND NAVIGATION COMPANY,
Plaintiff in Error,

vs.

THE OREGONIAN RAILWAY COMPANY, LIMITED,
Defendant in Error.

Brief and Argument for Plaintiff in Error.

J. N. DOLPH,
of Counsel for Plaintiff in Error.

WM. H. MOORE, PRINT., 511 ELEVENTH ST. N. W.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1889.

No. 236.

THE OREGON RAILWAY AND NAVIGATION COMPANY,
Plaintiff in Error,

vs.

THE OREGONIAN RAILWAY COMPANY, LIMITED,
Defendant in Error.

No. 237.

THE OREGON RAILWAY AND NAVIGATION COMPANY,
Plaintiff in Error,

vs.

THE OREGONIAN RAILWAY COMPANY, LIMITED,
Defendant in Error.

No. 238.

THE OREGON RAILWAY AND NAVIGATION COMPANY,
Plaintiff in Error,

vs.

THE OREGONIAN RAILWAY COMPANY, LIMITED,
Defendant in Error.

In Error to the Circuit Court of the United States for the District of Oregon.

Brief and Argument for Plaintiff in Error.

STATEMENT.

These actions were brought by the Oregonian Railway Company, Limited, alleged to be a corporation formed in Great Britain under the Companies' Act of 1862, against the Oregon Railway and Navigation Company, a corporation formed under the general laws of Oregon, on the covenants in an indenture of lease, alleged to have been executed on August 1, 1881, by which the former company undertook to demise to the latter its railway in Oregon for the term of ninety-six years, upon a rental, to be paid in advance, in semi-annual installments, of $68,131, on May 15 and November 11; being the same instrument which was held by this court, in Oregon Railway and Navigation Company *vs.* Oregonian Railway Company, Limited, (130 U. S., 1,) to be void, for want of power in the lessor to make a lease of its railroad, and for want of power in the lessee to take the lease.

No. 236 is brought to recover the installment of rent, alleged to have fallen due November 11, 1884, and Nos. 237 and 238 for the installments falling due May 15 and November 11, 1885.

The complaints upon which the actions were tried, with the exceptions of the allegations as to the dates when the installments of rent became due, are exact copies of each other. (See No. 236, Record, folios 79 to 83, inclusive; No. 237, Record, folios 45 to 49, inclusive; No. 238, Record, folios 7 to 11, inclusive.)

The Complaint.

It is alleged in the complaints that at all times thereinafter stated plaintiff had been and then was a corporation under the laws of Great Britain and Ireland, organized under the act of Parliament commonly known as the "Companies' Act of 1862," and is a citizen of Great Britain and owner of a certain railroad in the State of Oregon, and has its principal office at Dundee, in Scotland.

That by Section 6 of said "Companies' Act, 1862," it was and is provided that "any seven or more persons associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requisi-

tions of this act in respect of registration, form an incorporated company, with or without limited liability."

That on or about the 30th day of April, A. D. 1880, more than seven persons did subscribe their names to a memorandum of association, and did otherwise comply with the requisitions of said "Companies' Act, 1862," in respect of registration, and did thereby form plaintiff an incorporated company, with limited liability. (See No. 236, Record, folio 79, p. 46.)

That under the law of its creation and its memorandum of association plaintiff has power, among other things, to construct, own, operate, and lease railroads in Oregon, including the railroad and property thereinafter mentioned; that in said memorandum of association one of the objects of plaintiff's incorporation was declared to be "the building, constructing, reconstructing, equipping, owning, operating, leasing or selling, transferring or disposing of, or purchasing or otherwise acquiring, holding and operating, or otherwise using, working, or dealing in all or any such railway or railways, railroad or railroads, in the State of Oregon and the Territory of Washington, in the United States, or in either of them, or between such points in said State or Territory, or elsewhere in North America, as may *be* from time to time be resolved or determined upon by said company, and the carrying of passengers, goods, and minerals, and all other traffic and freight on, and the doing and performing of all other acts, deeds, and other operations connected with railways or railroads in the said State or Territory, or either of them, or elsewhere in North America," and that after its incorporation the State of Oregon recognized the plaintiff as duly incorporated and as having said powers, and did consent to the exercise of such powers within the State. (See No. 236, Record, folio 80, p. 46.)

That the defendant is a corporation under the laws of Oregon, a citizen of that State, has its principal office at Portland, and by its articles of incorporation took, and has power to operate and lease the said railroad and other property thereinafter mentioned, and that one of the objects of its incorporation was "to purchase or consolidate with, or lease or operate and maintain, on such terms as may be agreed upon," any railroad in Oregon.

That prior to the making of the indenture of lease mentioned plaintiff's board of directors passed a resolution authorizing its proper officers to sign and affix the seal of the company to such lease, and to acknowledge and deliver the same, and in like manner the board of directors of the defendant passed a resolution authorizing the proper officer of the defendant to sign, affix the corporate seal to, and acknowledge and deliver such indenture of lease, and that thereafter, as of the 1st day of August, A. D. 1881, said corporations, by their proper officers, signed, affixed their corporate seals to, acknowledged and delivered, each to the other, an indenture of lease, by which the plaintiff did demise and let to the defendant for the term of ninety-six years, from August 1, 1881, "the existing railroad," then owned by the plaintiff, and commonly known as the "narrow-gauge railroad," in the State of Oregon, together with certain equipments and appurtenances. That by said lease the plaintiff reserved and defendant covenanted to pay plaintiff an annual rental for said railroad and other property of twenty-eight thousand pounds sterling, in half-yearly payments of fourteen thousand pounds sterling each, on the 15th of May and 11th of November of each year, in advance. That defendant has refused to pay an installment of rent amounting to fourteen thousand pounds, equivalent to $68,131 in money of the United States, becoming due under the terms of said lease. (See No. 236, Record, folios, 81 and 82, p. 47.)

THE ANSWER.

The answers in the three cases are alike, except in the last two a former adjudication is set up, which defense it is unnecessary to consider here. By these answers the defendant denies that plaintiff at any time was or is a foreign corporation, or is incorporated at all under the Companies' Act of 1862, or under any law of Great Britain, or Ireland, or otherwise, or is a citizen of Great Britain, or is the owner of the railroad and property mentioned in the complaint, or has its principal or any office in Dundee, Scotland. Denies that about April 30, 1880, or at any other time, any number of persons subscribed their names to a memorandum of association, or otherwise complied with the

requisitions of said Companies' Act of 1862, or did thereby, or by any act, form plaintiff an incorporated company.

Denies that under any law or memorandum of association plaintiff took or acquired or had or has power to construct, own, operate, or lease the railroad mentioned in the complaint, or any railroad or other property in Oregon, or that it has any memorandum of association. Denies that the State of Oregon at any time recognized by law or otherwise plaintiff as a duly existing or incorporated foreign corporation, or as having any of the powers in the complaint mentioned, or consented to the exercise of such powers within the State. Alleges that plaintiff has never specified in any articles or memorandum of association the termini of its railroads mentioned in the complaint; that it has no knowledge or information sufficient to form a belief whether any pretended memorandum of plaintiff sets forth as an object or purpose of plaintiff's incorporation the things in the complaint specified, and that the laws of Great Britain, under which plaintiff pretends to be incorporated, require, among other things, that in the memorandum of association of companies incorporated thereunder "the objects for which the proposed company is to be established" shall be specified. (See No. 236, Record, folios 85 and 86, pp. 50 and 51.)

Denies that by its articles of incorporation, or at all, defendant took, or had, or has, power to lease the railroad, or other property in the complaint mentioned, and alleges that the only road or roads which defendant was organized to own or operate, or which it ever had or has power to own or operate, and which are mentioned in its articles of incorporation, extend east from the city of Portland, Oregon, and do not include or form any near connection with the road alleged to have been demised to it, which lies wholly south of said city, the nearest point thereof being about thirty miles from said city, and that the whole of its capital stock was contributed and applied in the construction and equipment of its said roads. Denies knowledge or information sufficient to form a belief as to whether plaintiff's board of directors passed a resolution authorizing the execution of the lease. Denies that defendant's board of directors passed any resolution authorizing the execution of the lease. Denies that

plaintiff and defendant agreed to execute the lease. Denies that the alleged indenture of lease was signed by the proper officers of the plaintiff or defendant, or that the corporate seal of either company was affixed by authority of the board of directors, or that the same was duly acknowledged by either plaintiff or defendant. Alleges that the pretended resolution of defendant's board of directors was passed by four directors at a special meeting, while the board consisted of eleven persons; that said meeting was not a regular or stated meeting, and no other resolution was passed authorizing the execution of said lease; that there were only four members of defendant's board present at said meeting, and that no notice of the object of said meeting was given to the members of the board. (See No. 236, Record, folios 87 and 88.) Denies that by any indenture of lease plaintiff demised to defendant for any term the property in the complaint mentioned. Alleges that at the time of the pretended execution of said lease defendant's office was at Portland, Oregon; that Henry Villard, the president, and Trolins Tyndall, assistant secretary of defendant, acting solely upon said pretended resolution, and without authority from defendant, at the city of New York, signed said lease, and Tyndall affixed the corporate seal thereto; and that the stockholders have never approved the said acts of Villard and Tyndall, or the said pretended demise. Denies that by said pretended lease plaintiff reserved or defendant covenanted to pay the annual rental of twenty-eight thousand pounds sterling, or any sum whatsoever, or that any installment of rent at any time became due or payable to plaintiff from defendant, under the covenants of the lease or otherwise. (See No. 236, Record, folios 88 and 89.)

Admits that the defendant entered into possession of the property in the complaint mentioned about the time stated, and continued in possession until May 15, 1884, when it offered to restore the same to plaintiff, and requested plaintiff to receive the same; that defendant had fully paid plaintiff all rent and all demands arising upon said pretended lease up to said date; that plaintiff thereupon requested defendant to continue in possession of said property for a further period of six months to prevent losses and embarrassment to plaintiff, and it was thereupon agreed

between plaintiff and defendant that defendant would continue to operate said road for a further period of six months, so far as the same could be done without serious loss to defendant; and that it was stipulated in the agreement that defendant should thereby incur no legal obligation, nor be prejudiced in respect to any claim that might be made against defendant in respect to said pretended lease. That in compliance with said request and agreement, and not otherwise, defendant continued in possession of the property until November 5, 1884, and that prior to the expiration of said period of six months the road and property, in a suit brought by plaintiff, and on plaintiff's motion, was placed in the hands of a receiver, and that plaintiff's demand is for six months' rental while the property was in the hands of the receiver. (See No. 236, Record, folios 89 and 90, pp. 51 and 52.)

Motion to Strike out Parts of Answer.

Plaintiff filed a motion to strike out fourteen separate portions of the answer in No. 236, on the ground that they were "sham, frivolous, irrelevant, immaterial, and redundant," and similar motions in the other two cases. These motions refer to words, lines, and pages of the written answers, and it is difficult to apply them to the printed answers in the record.

It will save trouble to take the statement of the court in the opinion filed upon the decision of these motions as to what the motions embrace. It is found in No. 236, upon pages 67, 68, and 69 of the record. Judge Deady in that opinion said:

"The motions to strike out include fourteen portions or clauses of the answers." * * *

"The *first* one is a denial of the allegation of the complaint that the plaintiff is a citizen of Great Britain. * * *

"The *second* clause is an allegation that the plaintiff has not specified in its memorandum of association the termini of the road it was incorporated to construct, lease, or operate in Oregon. * * *

"The *third* clause is a denial of any knowledge whether the plaintiff's memorandum of association specifies the purpose of its incorporation, as alleged in the complaint. * * *

"The *fourth* one is an allegation as to what the memorandum of association under the Companies' Act of Great Britain is required to contain. * * *

"The *fifth* one is a denial of defendant's power to lease or operate plaintiff's road. * * *

"The *sixth*, *seventh*, and *twelfth* are allegations to the affect that plaintiff's road has no near connection with the defendant's, and that the capital stock of the latter was not contributed to operate leased roads, and that the lease in question was not ratified by its stockholders. * * *

"The *ninth*, *tenth*, and *eleventh* ones are clauses and phrases found in an allegation that the lease in question was executed by the president and assistant secretary of the defendant, in pursuance of an invalid resolution passed by a minority of the directors without authority of law, to the effect, that while the defendant's principal office is at Portland, its president and assistant secretary signed and sealed said lease in New York. * * *

"The *thirteenth* and *fourteenth* ones are statements to the effect that on May 15, 1884, the defendant offered to return the road to the plaintiff, but that the defendant retained possession of the same under a stipulation with the plaintiff, that such possession should not have the effect to prejudice either party until November 5, 1884, when, in a suit brought in this court by the plaintiff, the defendant was enjoined, and required to operate the road until further order of the court, which it did until the appointment of a receiver in said suit, on motion of the plaintiff, who thereupon took possession of the property and held it during the period for which the rent is sought to be recovered in this action." * * *

Demurrer to the Answers.

The plaintiff also demurred to the following portions of the answers, the demurrers in all these cases being alike, namely:

"To all the portion of said answer wherein the defendant pleads to or denies the corporate existence or due incorporation and organization of plaintiff as a corporation, or facts relating thereto, or which pleads to or questions or denies compliance by plaintiff with foreign or domestic laws in the matter of plaintiff's incorporation and organization, or pleads to or denies, or attempts to plead to or deny, or question the powers, rights, privileges, or franchises or ownership of plaintiff alleged in said complaint, for the reason that the said defendant ought not to be allowed

or heard to say or allege that the plaintiff is not a corporation, or has no power to make the contract herein sued on, or to make any denials contrary to defendant's own acknowledgement and deed of about August 1, 1881, as appears by the said complaint and admitted by the said answer thereto." (No. 236, folio 96, p. 55.)

Replies.

The plaintiff also at the same time replied—

1st. Denying the allegations in the answer, in effect that the resolution of defendant's board of directors authorizing the execution of the lease had been passed by less than a quorum of directors at a special meeting, and that the execution of the lease by the president and assistant secretary was without authority.

2d. Alleging that after the execution of the lease such execution was duly and fully ratified by the defendant.

3d. Setting up the judgment of the Circuit Court of the United States for the district of Oregon, in the case of Oregon Railway and Navigation Company *vs.* Oregonian Railway Company, Limited, the same parties, which action was brought to recover a semi-annual installment of rent upon the covenants of the lease in question, but which cause had then been taken to the Supreme Court upon a writ of error, and the judgment in which was reversed by the court. (See Oregon Railway and Navigation Company *vs.* Oregonian Railway Company, Limited, 130 U. S., 1.) (No. 236, Record, folios 99 to 106, inclusive.)

Demurrer to Reply.

To that portion of the reply containing new matters the defendant demurred. (See No. 236, folio 117.)

The motions to strike out parts of the answers, the demurrers to the answers, and demurrers to the replies, were all heard at one time, and in all three of the cases the same order made, and but one opinion filed in all.

The court allowed the motions to strike out parts of the answers, except clauses numbered *three* and *eight;* allowed the demurrers to the answers, *including the matters in said clauses,* (*three and eight,*) and overruled the demurrers to the replies.

The concluding portion of the opinion of the court is as follows:

"The motions to strike out portions of the answers are allowed, except as to the clauses numbered three and eight, and as to these they are disallowed. The demurrers to the answers, including the matter in said clauses three and eight, are allowed, and the demurrers to the replies are overruled.

"This leaves the cases for trial on the questions of fact arising on the replies of ratification and prior adjudication to the answers of the defendant, the former being by § 92 of the Code 'deemed controverted by the adverse party as upon a direct denial of avoidance, as the case may require,' without any actual rejoinder thereto."

The causes being now left for trial only on questions of fact arising on the replies of ratification and prior adjudication to the answer, (No. 136, folio 123, bottom of p. 72,) the parties stipulated that said issues might be submitted to and tried by the court without the intervention of a jury, and that evidence admitted in one case might be used in the others. The stipulations were the same in each case. (See No. 236, folio 125, p. 73.)

The three cases were tried together on May 17, 1886, (No. 236, folio, 95,) and on the 13th of September findings of fact and concluions of law were filed in all the cases.

The only finding of fact upon the issues made by the replies to the answers was, in substance and effect, after finding that the defendant executed the indenture of lease of August 1, 1881, "that the defendant *thereafter did duly ratify and confirm the same.*" (No. 236, folios 131 and 132, p. 75.)

Thereafter and on December 20, 1886, judgment was rendered in all the cases; in No. 236 for $78,259.80 and costs, (see Record, folio 141, p. 86;) in No. 237 for $75,474.00 and costs, (see Record, folio 107, p. 57;) in No. 238 for $72,809.32 and costs, (see Record, folio 70, p. 43.)

The stipulations and findings of fact and conclusions of law were alike. The opinion of the court embraced all the cases.

Upon the trial exceptions were taken by defendant and allowed by the court to the ruling of the court admitting testimony, offered to show a ratification of the execution of the lease, and admitting the judgment-roll in the previous case between the

same parties, and a bill of exceptions was allowed and signed by the judge, which is precisely the same in all the cases.

But the motions to strike out parts of the answers and the demurrers to the answers raised questions which are decisive of these cases, and it is not necessary to consider the exceptions taken at the trial.

The questions raised in these cases by the motions to strike out, and demurrers to the answers, *are the precise questions which were raised in the same manner in the action* between the same parties, decided by this court at the October term, 1887.

They are:

First. Whether under the constitution and general laws of Oregon a corporation, organized under the laws of that State, could, at the date of the execution of the indenture of lease in question, take a lease of the railroad of another company and operate the same for ninety-nine years?

Second. Whether the laws of Oregon at said date conferred on a foreign corporation the right to make a lease of a railroad within the State for such a term?

Third. Whether under the facts of the case the lessee was estopped from setting up the want of power of the lessor to make such a lease, or of itself to take such a lease?

The court below in these cases held, upon the motions to strike out parts of the answers, and upon the demurrers to the answers, as it held upon a similar motion to strike out and a demurrer to the answer in the former case, that—

The defendant had power to take the lease.

That the plaintiff had power to make the lease; and

That the defendant was estopped to deny the power of the plaintiff to make the lease.

Assignment of Errors.

First. The court erred in sustaining the demurrer of the plaintiff to each portion of the answers demurred to.

Second. The court erred in allowing the motion of plaintiff to strike out portions of the answers.

Third. The court erred in overruling defendant's objection and admitting in evidence upon the trial a transcript of the judgment-roll in the case of The Oregon Railway and Navigation Company, Plaintiff, *vs.* The Oregonian Railway Company, Limited, in the United States Circuit Court of the State of Oregon, set forth in the bill of exceptions, commencing on page 172 of the Record, No. 236.

Fourth. The court erred in rendering judgment in favor of the plaintiff and against the defendant.

Brief and Argument.

In Oregon Railway and Navigation Company *vs.* Oregonian Railway Company, Limited, (130 U. S., 1,) all the important questions in these cases were decided by this court, and the lease upon which these actions were brought was held to be void. It was held (I quote from the syllabus:)

"The constitution and general laws of Oregon do not authorize a railroad corporation, organized under the laws of the State, to take a lease of the railroad and franchise; that

"The general laws of Oregon confer on a foreign corporation no right to make a lease of a railroad within the State, but only the right to construct or acquire and operate one there; and that

"The operation of a railroad and payment of rent for three years by a lessee under a lease of it for ninety-six years, which was executed in violation of the corporate powers, both of the lessor and of the lessee, does not so far execute the contract of lease by part performance as to estop the lessee from setting up its illegality in an action at law to recover after-accruing rent."

The following, in which the questions involved in these cases are discussed, is copied from my brief in that case:

1. *Was the plaintiff in the court below authorized by its foreign charter or the laws of Oregon to enter into the contract set up in the complaint?*

2. *Was the defendant in the court below authorized to enter into the contract set up in the complaint?*

3. *Does the act of the president and secretary of the Oregon Railway and Navigation Company, assuming to act for that company in*

signing the lease set up in the complaint, estop it from showing want of power in the lessor to execute said lease?

4. *Is the Oregon Railway and Navigation Company, by the act of its president and secretary, in assuming to execute for it the lease set up in the complaint, estopped to deny that the hiring of said railroad was not within the scope of its corporate powers?*

These questions will be discussed in the order stated.

1. *Was the plaintiff in the court below, the Oregonian Railway Company, Limited, authorized by its foreign charter or the laws of Oregon to enter into the contract set up in the complaint?*

It is settled by the decisions of this court, that "unless specially authorized by its charter, or aided by some other legislative action, a railroad company cannot by lease or other contract turn over to another company, for a long period of time, its road and all its appurtenances, the use of its franchises, and the exercise of its powers, nor can any other railroad company without similar authority make a contract to receive and operate such road, franchises, and property of the first corporation, and that such a contract is not among the ordinary powers of a railroad company, and is not to be presumed from the usual grant of powers in a railroad charter."

Penn'a. Co. *vs.* St. Louis, Alton, &c., R. R., 118 U. S., 290.
Green Bay & Minnesota R. R. Co. *vs.* Union Steamboat Co., 107 U. S., 98.
Thomas *vs.* R. R. Co., 101 U. S., 71.
Pierce *vs.* Madison & Indianapolis R. R. Co., 21 How., 441.
New York & Md. Line R. R. Co. *vs.* Winans, 17 How., 30.
Laken *vs.* Railroad Co., 13 Oregon, 436.
See also Davis *vs.* Old Colony R. R. Co., 131 Mass., 258.
Eastern Counties Ry. *vs.* Hawkes, 5 H. S. Cas., 331, 371 to 381.
Ashbury Ry. Carriage & Iron Co. *vs.* Ritchie, L. R., 7 H. L., 653.
McGregor *vs.* Dover & Deal Ry., 12 Q. B., 618.
East Anglican Ry. *vs.* Eastern Counties Ry., 11 C. B., 757.

No such powers had been given to the parties to this transaction.

To ascertain whether the plaintiff had power, under its charter and the laws of Oregon, to make the contract in question, it is necessary to consider the provision contained in the constitution of the State concerning the formation of corporations, the provisions which have been made by law for the formation of domestic corporations, and for the transaction of business in the State by foreign corporations, incorporated for the purpose of constructing and operating railroads.

The constitution (Art. 2, Sec. 2,) provides:

"Corporations may be formed under general laws, but shall not be created by special laws, except for municipal purposes. All laws passed pursuant to this section may be altered, amended, or repealed, but not so as to impair or destroy any vested or corporate rights."

On October 11, 1862, the legislative assembly passed a general law providing for the formation of private corporations. Section 1 (see Code of 1874) provides that any three or more persons may incorporate themselves "for the purpose of engaging in lawful enterprise, business pursuit, or occupation," in the manner provided in Section 2.

Section 2 provides that such persons, to become incorporated, shall make, subscribe, and file with the Secretary of State and the clerk of the county in which the business of the corporation is proposed to be carried on, written articles of incorporation; and Section 4 provides: That "the articles of incorporation shall specify"— * * *

"2. The enterprise, business pursuit, or occupation in which the corporation proposes to engage. * * *

"6. If the corporation is formed for the purpose of navigating any stream or other water, or making or constructing any railroad, macadamized road, plank road, clay road, canal, or bridge, the termini of such navigation, road, canal, or the site of such bridge."

Section 5, as amended in 1878, provides that—

"Upon making and filing the articles of incorporation, as herein provided, the persons subscribing the same are incorporators, and authorized to carry into effect the objects specified in the articles in the manner provided in this chapter, and they and

their successors, associates, and assigns, by the name assumed in such article, shall thereafter be deemed a body corporate, with power: * * *

"1. To sue and be sued. * * *

"4. To purchase, possess, and dispose of such real and personal property as may be necessary and convenient to carry into effect the objects of the incorporation, and to take, hold, and possess, and dispose of all real and personal property donated to such corporation by the United States, or by any State, Territory, country, city, or other municipal corporation, or any person, firm, association, or private corporation, for the purpose of aiding in the objects of such corporation."* * * *

Section 17 of said act, as amended in 1878, is as follows:

"All corportions that expire by the limitations specified in their articles of incorporation, or are dissolved by virtue of the provisions of Section 19 of this act, or are annulled by forfeiture or other cause, by a judgment of a court, continue to exist as bodies corporate for a period of five years thereafter, if necessary for the purpose of prosecuting or defending actions, suits, or proceedings by or against them, settling their business, disposing of their property, and dividing their capital stock, but not for the purpose of continuing their corporate business."

Section 19 is as follows:

"Any corporation organized under the provisions of this chapter may, at any meeting of the stockholders which is called for such purpose by a vote of the majority of the stock of such corporation, increase or diminish its capital stock or the amount of the shares thereof, or authorize the dissolution of such corporation and the settling of its business and disposing of its property, and dividing its capital stock in any manner it may see proper."

By an act approved October 21, 1878, entitled "An act to authorize foreign corporations to do business and exercise their corporate powers within the State of Oregon," the defendant in error claims to have been authorized to execute the lease in question. Said act consists of two sections, of which the following is a copy:

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*This section was amended at the session of the Oregon Legislature, held in January, 1887, so as to authorize a railroad corporation to lease its road to another company. (See Session Laws of 1887, p. 14.) [A copy of the section as amended (the amendment being in italics) is printed as an Appendix hereto.]

"SEC. 1. That any foreign corporation incorporated for the purpose of *constructing, or constructing and operating, or for the purpose of or with the power of acquiring and operating any railway,* macadamized road, plank road, clay road, canal, or bridge, or for the purpose of conducting water, gas, or other substance by means of pipes laid under the ground, shall, on compliance with the laws of this State for the regulation of foreign corporations transacting business therein, have *the same rights, powers, and privileges in the exercise of the rights of eminent domain, collection of tolls, and other prerogative franchises* as are given by the laws of this State *for the purpose of constructing any railway,* macadamized road, plank road, clay road, canal, or bridge, or for the purpose of conducting water by means of pipes laid under the surface of the ground.*

"SEC. 2. Nothing in this act contained shall be so construed as to give to any foreign corporation or corporations any other or further rights, powers, or privileges than may be acquired or exercised by corporations incorporated under the laws of this State; but only so as to give to foreign corporations the same rights, powers, and privileges, on a compliance with the laws of this State, as may be acquired or exercised by corporations incorporated under the laws of this State."

Did this act confer on the Oregonian Railway Company, Limited, power to execute the contract set up in the complaint?

That company is a foreign corporation organized, not for the purpose of transacting any business, or with power to transact any business, in the country where it claims to have been incorporated and organized, but in North America, and principally in the State of Oregon.

It is too well settled by the decisions of the courts of this country to require argument, that a corporation has no existence except in the country of its incorporation, but it may by comity be permitted to perform, through agents in other States, such ordinary and general business as individuals might perform. This comity may be denied them by the legislative power, and a foreign corporation, absolutely or under such conditions as the legislative power chooses to impose, may be prohibited

* This act was amended at the session of the Oregon Legislature of January, 1887, so as to authorize a foreign corporation, specified in the act, to exercise the powers of a domestic corporation. (See Session Laws of 1887.) [A copy of the amendatory act (the amendments being in italics) is printed as an Appendix hereto.]

from transacting business in such States. In the State of Oregon foreign corporations of the character mentioned in the act of October 21, 1878, are authorized (the act being constitutional) *to transact certain business*, and have conferred upon them *certain rights, powers, and privileges.* The enumeration of these rights, powers, and privileges in the act implies the *exclusion of all others.* The maxim *expressio unius, etc.*, is applicable.

What are the foreign corporations embraced in this act? They are those, and only those, incorporated for the purpose of "constructing," "constructing and operating," or for the purpose of "acquiring and operating," any railway or other road, &c., mentioned in the act. If the letting of a railroad, a single transaction, is a "*business pursuit or occupation*," within the meaning of Section 4 of the Oregon act providing for the formation of private corporations, as was assumed by the court below, then a corporation incorporated, among other things, for leasing its railroad when constructed is not authorized under that act to transact that portion of its business in the State of Oregon, because it is not included in, or necessary to the business of, "constructing," "constructing and operating," or "acquiring and operating" a railroad.

"*What are the "rights, powers, and privileges," which such foreign corporations have under said act?* Not the same "rights, powers, and privileges" as domestic corporations formed for like purposes, as was assumed by the court below, but "the same rights, powers, and privileges" *in the exercise of the rights of eminent domain, collection of tolls, and other * * * franchises,* as are given by the laws of the State to corporations organized within the State *for the purpose of "constructing" any railway,* &c. I omit the word "prerogative," because, if it has any meaning, it is used restrictively, and may be omitted without impairing the force of the argument. If we assume that the word "constructing," where it refers to domestic corporations, is equivalent to "constructing and operating," still the grant of powers is such only as are necessary to the exercise of the franchises mentioned.

In Morgan *vs.* Louisiana, 73 U. S., 217, the court say:

"The franchises of a railroad corporation are rights or privi-

leges which are essential to the operation of the corporation, and without which its road and works would be of little value; such as the franchise to run cars, to take tolls, to appropriate earth and gravel for the bed of its road, or water for its engines, and the like."

These are the franchises that are included in the expression, "other prerogative franchises," in this statute. The power to make a lease of its railroad is not necessary to the enjoyment of these franchises, nor is it necessary to the business of the "constructing," "constructing and operating," or the "acquiring and operating" of a railroad.

The power to make a lease of its railroad in Oregon not being included in the business which foreign corporations are authorized by the act in question to transact in Oregon, and not being included in the powers, rights, and privileges conferred upon such corporations, because not necessary to the exercise of the franchises of such corporations, it follows that the making of the contract set up in the complaint by the Oregonian Company was prohibited by implication, and is illegal and void.

In Railroad Companies *vs.* Gaines (97 U. S., 697,) a grant of "powers, rights, and privileges" was held to be thus restricted by the business the corporation was authorized to transact. The privilege of exemption from taxation had been granted to the Nashville and Chattanooga Railroad Company in its original charter. The court, in construing Section 58 of the charter of the Knoxville and Charleston R. R. Co.—which is as follows:

"The said company is hereby invested, for the purpose of making and using said road, with *all the powers, rights, and privileges*, and subject to all the disabilities and restrictions that have been *conferred and imposed upon the Nashville and Chattanooga Railroad Company* in its original charter"—

said that the grant here was "*not of all the rights and privileges of the Nashville and Chattanooga Company, but of such as were necessary for the purpose of making and using the road*, or, in other words, the franchise of the company, which do not include immunity from taxation."

But suppose, for the sake of the argument, that by the act in question there was conferred upon the Oregonian Railway Company

Limited, all the powers possessed by domestic corporations incorporated for like purposes, I still contend that it had no power or authority to let its railroad.

The power to make a lease of its railroad is not conferred upon a domestic railroad corporation by the general incorporation act of Oregon.

"The powers of corporations organized under legislative statutes are such, and such only, as those statutes confer." * * *

"The charter of a corporation is the measure of its powers, and the enumeration of these powers implies the exclusion of all others."

Thomas *vs.* Ry. Co., 101 U. S., 71.

Marion Savings Bank *vs.* Dunkin, 54 Ala., 473, and cases cited.

It will not be claimed that any statute of the State expressly authorizes such a lease. The authority, if it exists at all, is found in subdivision 4 of Section 5, or in Sections 17 and 19 of the general law, hereinbefore set forth. Subdivision 4 of Section 5 empowers a corporation "to purchase, possess, and dispose of such real and personal property as may be necessary and convenient to carry into effect the object of the corporation," etc. A corporation formed for the purpose of buying and selling goods would, probably, under this subdivision, have power to buy and sell such personal property at pleasure, because that would be necessary and convenient to carry into effect the object of its incorporation.

Possibly the same may be true in regard to a corporation formed for the purpose of dealing in real property. But *a railroad company incorporated under this act, as such*, would have power only to purchase and hold real or personal estate *necessary and convenient for the construction and operation of its road;* and the better construction, I think, would be that it could *only sell it when no longer necessary for that purpose*, without complying with the provisions of Section 19 of the act, which, as we shall hereafter see, contemplates a dissolution of the corporation when it disposes of its property.

In the case of Coe *vs.* Columbus, Piqua and Indiana R. R. Co. *et al.*, 10 Ohio State Repts., this precise question came before the

Supreme Court of Ohio: A railroad company was authorized "to acquire and convey at pleasure all such real and personal estate as may be necessary and convenient to carry into effect the object of the corporation." The court held that "like any other general words they must be restrained into the general fitness of the matter," and that such language did not authorize the sale, mortgage, or lease of the real or personal estate which was necessary for the purpose of maintaing and operating the railroad.

But let us suppose, for the purposes of the argument, that this subdivision does confer the power upon a railroad company to dispose of all its property. Such a power could not be construed to authorize it to dispose of its property by leasing it to another company for a term of years, as that would be, as we shall see directly, clearly incompatible with the provisions of Sections 16, 17, and 19 of the act.

The power of alienation conferred upon corporations by this subdivision is a power to dispose of *property*, as distinguished from *franchises*, and it may be admitted that the property the corporation is here authorized to dispose of, whatever that may be, may be sold, absolutely, or mortgaged, as a mortgage is only a qualified or conditional sale, but the question whether such power of disposition *authorizes a railroad company to make a lease of its railroad* will be discussed hereafter.

His Honor, Judge Deady, in his opinion, assuming that a railroad company may lease its property unless prohibited by some positive statutory enactment, says:

"The idea of such restraint is also incompatible with the provisions of the corporation act, Section 18. That, in effect, authorizes a railroad corporation to terminate its existence at its option and dispose of its road."

Section 19 must have been intended. By reference to Section 19 it will be seen that it authorizes a railroad corporation to dispose of its road only in connection with "the dissolution of such corporation and the settling of its business * * and dividing its capital stock." And Section 17, as amended by the act of October 21, 1878, provides only that corporations "dissolved by virtue of Section 19, * * annulled by forfeiture or other cause

by judgment of a court, continue to exist * * for a period of five years thereafter, if necessary for the purpose * * of settling their business, disposing of their property, and dividing their capital stock.

These sections, so far from conferring authority upon an Oregon railroad corporation to let its road to another company for a period of ninety-six years, or for any other period, or being incompatible with the idea that such lease is unauthorized by the laws of the State, authorize, in my judgment, nothing but an absolute sale and transfer of the property of the corporation, so that, with the possession of the property, the transferee becomes the owner of the property and becomes subject to all the duties and liabilities toward the State, the public, and individuals which attach to the *ownership, possession, operation, and management of such property when united in one person;* and said sections contemplate that such transfer shall be made contemporaneous with the dissolution of the corporation.

Besides, the transfer authorized by Section 19, and referred to in Section 17, can only be authorized at a stockholders' meeting, and then by vote of a majority of the stock of such corporation.

It is not pretended that such authority existed for the execution of the contract set forth in the complaint. On the contrary, it is expressly averred that it was not so authorized in the answer of the defendant.

So far, therefore, from Section 19 being incompatible with the idea that a domestic railroad corporation in Oregon does not possess power to dispose of its railroad and franchises by lease, it is, in itself, a denial of such power, because the circumstances under which and the manner by which the property of such a coporation may be disposed of are specified in the section, and such provisions are incompatible with the existence of power to lease its property for a term of years.

It follows that the power to excute a lease is denied to such a corporation unless conferred by some other express provision in the statute, which would overrule the otherwise controlling implication of the sections referred to.

The making of a special provision in this section for the disposition of the property of a corporation is inconsistent with the

idea that power to dispose of all its property is conferred upon a railroad corporation by any other portion of the act.

The words "dispose of," in subdivision 4 of Section 5, *supra*, must be held to be equivalent only to the word "sell," and cannot, by any fair construction, be held to authorize the execution of such contract as that which forms the subject-matter of this action—a contract by which a foreign corporation, domiciled in a foreign country, holding and operating a railroad in Oregon by permission of the State, leases its railroad and the franchises necessary to its operation for a period of ninety-six years, thus disabling itself from performing those functions which it had undertaken to perform, and retires with all its agents beyond the seas, but still remains the owner of the property and of the franchises granted to it upon consideration of their exercise.

A contract so obviously against public policy, (see Thomas *vs.* R. R. Co., 101 U. S., 71,) unless expressly authorized by statute or by necessary implication, will not be enforced, and the authority to make it will not be implied from a grant of power to a corporation to sell property no longer necessary for the objects of its incorporation, or to dispose of all its property absolutely upon disincorporating and winding up its business.

The reasons for holding such a contract void on the ground of public policy do not exist in the case of an absolute sale, voluntary or involuntary, of all the property of such a corporation to another corporation formed under the same general law, as in the latter case the ownership of the property and the management of the same would be vested in the same corporation, with all the rights and powers and subject to all the liabilities of the former owner, *while the corporation disposing of the property by ceasing to transact business would cease to be a corporation* under the provisions of Section 16 of said act, which provides *that if any corporation organized under it shall "for any period of six months after the commencement of its business neglect and cease to carry on the same, its corporate powers shall also cease."*

The proposition that a domestic railroad corporation in Oregon may transfer all its property to another company by lease for a term of years, reserving an annual rent, cease to transact the business pursuit or occupation for which it was incorporated,

and transact no business except the collection of rent for its property and the distribution of it in dividends to its stockholders, is incompatible with the provision of Section 16 of the general incorporation law, quoted above, *which attempts to secure the due performance by the corporation of its functions in consideration of the grant of its franchises, and provides for a forfeiture of such franchises ipso facto whenever such corporation shall cease to exercise them for a period of six months.*

But it is contended that the letting of its road is described in the articles of incorporation of the Oregonian Company as its business in part, and that by specifying in its articles the power to let its road as a portion of the business which it proposes to transact, it has acquired the power to do so. Upon this point the learned judge who tried this cause in the court below fell into an error by confounding the *power* of a corporation to perform a single act, (such as the execution of a lease by a railroad company transferring the control of its entire property for a term of years, and thus *disabling itself from transacting the business* for which it was formed,) with the *business* of a corporation as that term is used in Section 1 and in subdivision 2 of Section 4 of the Oregon law, *supra.*

In a broad sense, making a lease is business, but not such a business as is intended where the term is used in the Oregon act with reference to the enterprise, pursuit, or occupation in which a corporation proposes to engage.

Subdivision 2 of Section 4, as we have seen, requires the corporators to state in their articles of incorporation "the enterprise, business pursuit, or occupation in which the corporation proposes to engage." Section 5 of said act enumerates the powers which all corporations, for whatever purpose incorporated, may exercise. The power of a corporation to dispose of its property must, as we have already seen, be found under Sections 5 and 19 of the act.

By "business" under this law is meant the ultimate thing to be done in the exercise of the corporate franchises, such as "constructing" a railroad, "constructing and operating" a railroad, the business which foreign corporations are authorized to transact in Oregon by the act of October 21, 1878. The selling, mortgaging, transferring, or leasing a franchise to transact a business

for which the corporation is formed cannot be the business of the corporation. The power to sell, mortgage, and lease is a matter wholly distinct from its business, by which is meant the ultimate end of its creation.

The object of requiring corporations to be formed under general laws is undoubtedly to prevent the granting of special favors to particular corporations, and to secure a uniformity of rights and powers in dealing with the corporate property. But if a corporation can acquire a special power not granted to all corporations under the general law by enumerating such power in its articles of incorporation as a business to be transacted, the object of the constitution would be frustrated, and there would be, in the course of time, corporations with as diverse powers as exist where they are formed at will by private legislative acts and the measure of their power determined by the caprice of the legislative body.

That the powers of an Oregon corporation are to be found only in the statute, and that there is no Oregon statute authorizing the lease of a railroad, has been decided by the Supreme Court of that State.

In the case of Lakin *vs.* Railroad Company, 13 Oregon, 436, the Supreme Court of Oregon held that a railway corporation, organized under the corporation law of that State, has no powers other than the statute confers and such as are incidental to its existence.

That case was an action to recover damages for personal injuries, resulting in death, alleged to have been caused by the negligence of the defendant and its agents. The defendant set up that at the time of the accident another company, the Oregon Pacific Railroad Company, was engaged in constructing the line of road mentioned in the complaint under a construction contract, and was still in possession of and operating the road. The court said:

"In this State the right to be incorporated is secured by a general law, and any persons may avail themselves of it by complying with its provisions. Under this general law the corporation, defendant, was organized, and possessed no other powers or functions than the statute creating it confers on such as are incidental to its existence. * * *

"It is regarded as settled that where one railroad company is authorized by law to contract or lease the road to another company, it is not responsible for the torts committed by the other company in the running of its trains or the management of its road. * * *

"It does not appear that the defendant had leased its road to the Oregon Pacific Company, and if it had, as there is no special statutory authority for it, the effect, as we have seen, would not have been to rid the defendant of its obligation to the public or to escape the liability for torts committed by such lease."

If, as I have attempted to show, a domestic railroad corporation, incorporated under the general incorporation laws of Oregon, is not authorized to let its railroad for a term of years, and cannot neglect for a period of six months to transact the business for which it was incorporated without losing its powers, then, although the foreign charter of the Oregonian Company may have contained the equivalent to a declaration that a part of the business of the company was to let its road, as it could exercise in Oregon no greater powers than a domestic railroad corporation, such declaration confers no power upon the corporation.

His Honor, Judge Deady, referring to the act, October 22, 1880, says:

"The effect of this act is clearly to establish, so far as the State and this court are concerned, the legal right of the plaintiff to construct, own, and operate this road, and, in my judgment, to dispose of it either absolutely or for a term of years."

In my judgment, an inspection of this act will show that such a construction of the act is wholly unwarranted, and that no such effect can be given to it. If the company was not in fact a corporation, as I shall undertake to show hereafter, the Legislative Assembly of Oregon could not by any enactment make it such, nor could it by a special law be authorized to exercise the franchises of domestic railroad corporations in fact, being prohibited by the constitutional provisions hereinbefore set forth. By the act in question the legislature of Oregon undertook to grant to the company "and to its assigns, and owners, and operators of the railway now being constructed by it," a public levee in the city

of Portland, the fee of which was held by the city, and certain rights of way upon the streets of Portland and over State lands. *The act neither empowers the company to transfer its property or franchise, nor implies the existence of a present power to sell or assign*, but, recognizing the possibility of a change of ownership in the future, either under future legislation or by operation of law, undertakes simply to provide that, whoever does own or operate the road shall have the benefit of this grant.

To this end it is provided that the company and "its assigns shall have *no* power to sell, convey, or assign the premises or rights granted," * * * "save only with and as part and parcel of and as appurtenant to the railway now built and owned by said company and now in process of construction by it."

This language must be construed with reference to the subject-matter of the act and the manifest intention of the legislature. Examined in connection with its context and the subject-matter, it will be seen that the Legislative Assembly was not considering or legislating concerning the power of the company to transfer its road or property, but granting to it valuable rights, to be used for the public benefit, and attempting to prevent them being diverted from the object for which they were made.

The language quoted, instead of being intended as a *grant* of powers, was intended as a *prohibition* against the alienation of the property granted by the act, so that it should no longer be used for the purposes for which it was granted and the public thus be deprived of the benefit of the property. The act in this respect is not very dissimilar from the one relied upon for a like purpose in Thomas *vs.* Railroad Company, 101 U. S., 71, and upon this point the language of Mr. Justice Miller in that case is in point. Referring to an act of the State of New Jersey, providing that it should be "unlawful for the directors, lessees, or agents of said railroad (Milleville & Glassborough R. R. Co.) to charge more than three-and-a-half cents per mile for carrying passengers," etc., which was claimed to be a ratification of the lease of a railroad to said company, he said:

"The legislature was determined that whoever did run the road and exercise the franchise conferred on the company, and under whatever claim or right this was done, should be bound

by the rates of fare established by the act. Hence, without undertaking to decide in whom was the right to the control of the road, language was used which included the directors, lessees, and agents of the road."

In Penn. Co. *vs.* St. Louis, Alton, &c., R. R., *supra*, a statute of Indiana that provided that in cases where a railroad had been leased, conveyed, or mortgaged to another railroad company, and was in possession of such company, it should be assessed for taxation to that company, was held to neither imply that such leases were lawful nor that the lease was authorized by law.

But if the act under consideration could be construed into a grant of power to the Oregonian Company to "sell, convey, or assign" its road, the power must still be exercised, if at all, *in the manner and subject to the conditions provided in the general incorporation law. A sale, conveyance, or assignment of all its property would be authorized only in connection with a surrender or forfeiture of its powers as a corporation.*

Again, the power to sell and convey would not include the power to transfer all of its property by lease for a term of years, as I have already attempted to show in considering the power of alienation conferred upon domestic corporations by the general law.

If it appeared that, by the act in question, the legislature of Oregon attempted to create the Oregonian Railway Company, Limited, a corporation, or to confer upon it corporate powers not already possessed under the general laws referred to, to that extent the act would be clearly unconstitutional and void.

The constitution of California, so far as it relates to the formation of private corporations, is substantially the same as the constitution of Oregon. It provides that—

"Corporations may be formed under general laws, but shall not be created by special act except for municipal purposes."

In San Francisco *vs.* Spring Valley Water Works, (48 Cal., 493,) the Supreme Court of the State of California, in a well-considered and able opinion by Judge Crockett, held that under this constitutional provision the legislature could not confer upon private corporations any powers, or grant them any privileges by special act. The court say:

"Nothing short of some imperative rule of constitutional construction could justify us in holding, at this late day, that, though corporations must be 'formed' under general laws, it is nevertheless competent for the legislature, by special grant, to confer upon a corporation once organized any powers, however extraordinary. We think, on the contrary, that no corporate rights or powers can be conferred by special grant, but must all be derived under general laws."

I am aware of the decision of this court in Wallace *vs.* Loomis, (97 U. S. Reports, 146,) in which it is held that a provision in the constitution of Alabama, which declares that—

"Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes,"

—did not prohibit the legislature from passing a special act changing the name of an existing railway corporation and authorizing it to purchase additional property.

But I think the power claimed for the Oregonian Company, under the Oregon act, is clearly distinguishable from the authority conferred by the act construed by the court in that case.

The power contended for by the Oregonian Company, under the Oregon act, is the power to do an act which, in the absence of statutory authority, would be against public policy, and void, while the power held to have been conferred by the Alabama act was not subject to this objection.

The authority conferred upon the Alabama corporation was that of acquiring additional railroad to be operated by its responsible owner, under the powers already possessed by the corporation, and subject to the liabilities already imposed by law upon it.

Mr. Justice Bradley, delivering the opinion of the court in that case, said :

"No new corporate powers or franchises were created."

Under the Oregon statute in question the power is claimed of enjoying all the privileges and franchises of a corporation by a body that has for ninety-six years deprived itself of all power to discharge the public duties and obligations that were the consideration upon which its privileges and franchises were granted, and that, too, although such power of dealing with corporate

property is denied to corporations formed under the general laws —*a special, extraordinary corporate power.*

II. *Was the defendant in the court below authorized to enter into the contract set up in the complaint?*

Upon this point but little need be said in addition to what has already been said in discussing the power of the plaintiff in the court below to execute the contract.

1. If it is unlawful for a railroad corporation, under the laws of Oregon, to transfer its road and franchises by lease, it cannot be lawful for another railroad corporation to hire such railroad and franchises. In other words, the business of hiring a railroad cannot be lawful unless the business of letting it is also lawful.

2. As the general incorporation law of Oregon does not confer upon a domestic railroad corporation power to let its road, it does not authorize another railroad corporation to hire such railroad.

3. As the power to execute a lease transferring its railroad and franchises cannot be acquired by a railroad corporation under the Oregon law, by stating in its articles that leasing its railroad is part of the business it proposes to transact, the power cannot be acquired by a railroad corporation to take a lease of the railroad of another company by stating in its articles that the hiring and operating the road of another company is a part of its business.

4. If an Oregon railroad corporation, by stating in the specification of its business in its articles of incorporation that such business shall be, in part, to hire and operate the railroad of another company, can acquire the power to do so, the statement in the articles of incorporation of the Oregon Railway and Navigation Company are void, because too general and indefinite.

That the statement is "to purchase and consolidate, or lease or operate and maintain, on such terms as may be agreed upon, any railway in Oregon," etc.

It is the obvious intent of the Oregon statute (subdivision 4, Section 4,) that every railroad enterprise to be conducted under that statute shall be identified by specifying the termini of the road. This clearly has not been done in the articles of incorporation of the Oregon Railway and Navigation Company.

III. *Does the act of the president and secretary of the Oregon Railway and Navigation Company, assuming to execute for that company the contract set up in the complaint, estop it from showing want of power in the lessor to execute said contract?*

The court below laid down the proposition, as I understand the opinion, that, although a contract of a corporation is unauthorized, but not in express terms prohibited by statute, or prohibited by the common law, and although unexecuted, the party with whom the contract was made is estopped to show the want of power in the corporation to make it. I do not think that such a distinction exists between contracts prohibited by statute or common law and contracts of a corporation not within the scope of its powers to perform for any purpose.

I claim to have shown that the execution of the contract set up in the complaint was *ultra vires* because it was a transaction not within the scope of the powers of either corporation to perform under any circumstances or for any purpose.

In re Comstock, 3 Saw., 228, and in Semple *vs.* The Bank, 5 Saw., 88, the court refused to enforce contracts made by a foreign corporation which had failed to execute a power of attorney, as required by statute, appointing an agent upon whom process could be served in suits against the corporation, and held that—

"No one is estopped to show that an act upon which a party claims a right is illegal because he was a party to it—even *in pari delicto.*"

There is an unbroken line of decisions in the Federal and State courts of this country to the same effect.

An act is illegal when it is not according to law, and it may be of no validity and void when no law has been violated. A lack of power to make a binding contract is as fatal to the validity of a transaction as an express statutory prohibition, and

there is no distinction in this respect between an act of a corporation prohibited by an express provision of law and one impliedly prohibited, because not within the express or implied powers granted by its charter. (See Rochester Insurance Co. *vs.* Martin, 13 Miss., 59.)

The contract which forms the subject-matter of this action is an executory contract.

As was said by Mr. Justice Deady:

"This action is brought on a contract to pay rent in advance, and not for past use and occupation. The consideration for the covenant or promise to pay this installment of rent is not the past, but the future use of the property. The contract to pay is, therefore, executory; and the same may be said of every other installment of rent provided for in the contract."

The legal disability of a corporation to execute a contract is not, in my judgment, as was held by the court below, a defense personal to the party who is under it. The doctrine of *ultra vires* rests upon considerations which affect the public. It is, as has been said, "a guard set over the prerogatives of the sovereign." A rule that the defense of *ultra vires* is a defense which cannot be taken advantage of by a party contracting with the corporation which has exceeded its powers, would remove all restraint upon the acts of corporations and enable them to make contracts not within the scope of their corporate powers with impunity. Under such a rule not only executed contracts not within the powers of the corporation must be permitted to stand, but unexecuted contracts would be enforced so long as the corporation chose to abide by its contract, and no longer.

The rule on this question of estoppel is thus stated in Morawetz on Private Corporations, § 86:

"If a contract entered into by a corporation was not authorized by its charter, then such contract may be avoided by either party, so long as it remains wholly unexecuted."

"A corporation cannot be compelled by legal process to do an act unauthorized by its charter." Id., § 87.

"If contracts between corporations and individuals are absolutely void because *ultra vires*, then this defense could be set up

by the individual as well as the corporation ; and where it would be greatly to the interest of the individual so to do, the corporation, though suffering great pecuniary loss thereby, could not avoid such a defense on the part of the other contracting party." (Wood's Field on Corporations, § 235.)

"Corporations cannot be rendered directly liable upon *ultra vires* transactions, but must account for benefits received therefrom. As long as the transaction remains executory, it is established that it cannot be enforced. But if it be executed, though in England it cannot be enforced or sued on, yet in the United States there seems some doubt whether the corporation could be allowed to set up the defense of *ultra vires*. In both countries, however, unquestionably, the corporation must account for benefits derived." (Green's Brice's Ultra Vires, 42.)

"Any party to *ultra vires* transaction may set up the defense thereof, and any one corporator may call upon the courts to restrain the corporation from engaging therein." (Green's Brice's Ultra Vires, 42.)

In Marion Savings Bank *vs.* Duncan, (54 Ala., 473,) Stone, J., speaking for the court, said:

"In the case of the Pennsylvania Railroad Company, 21 Penn. State Rep., 22, Chief Justice Black, delivering the opinion of the court, said: 'When the State means to clothe a corporate body with a portion of her own sovereignty, and to disarm herself to that extent of the powers that belong to her, it is so easy to say that we will never believe it to be meant when it is not said.'

"Speaking further of the rule of construing the powers of a corporation, he said: 'In the construction of a charter, to be in doubt is to be resolved; and every resolution which springs from the doubt is against the corporation.'"

"In the case of Grand Lodge of Ala. *vs.* Waddill, 36 Ala., 315, we quoted this language approvingly. Substantially the same idea was expressed in the following cases: State *vs.* Stebbins, 1 Stew., 308; State *vs.* Mayor and Aldermen of Mobile, 5 Por., 279; Mayor and Aldermen *vs.* Allaire, 14 Ala., 400; *Ex-parte* Barnette, 30 Ala., 461.

"In the case of City Council of Montgomery *vs.* M. W. Plank Road Co., 31 Ala., 76, we affirmed the above principle, and went a step further, holding that a party dealing with a corporation in a matter not within the purview of its delegated powers does not thereby estop himself from setting up in defense the want of

authority in the corporation to make the contract. The same doctrine was affirmed in the case of Grand Lodge *vs.* Waddill, *supra*.

"In such a case the doctrine of estoppel cannot be let to apply without clothing corporations with the ability to increase their powers indefinitely by sheer usurpation.

"Such contracts upon the part of a corporation are *ultra vires* and void; and no right of action can spring out of them."

In Lehman *vs.* Warner, 61 Ala., 467, it was held that "a corporation cannot enforce or be made liable on a contract it was without capacity to make; and if the contract was without the scope of its corporate powers, neither party is estopped from asserting its invalidity."

In Bradley *vs.* Bradley, 55 Illinois, 417, it was said by the court:

"While a contract remains executory it is perfectly true that the powers of the corporation cannot be extended beyond their proper limits for the purpose of enforcing a contract."

In Darst *vs.* Gale, 83 Illinois, 14, where it is held that a contract fully performed will be upheld, although where the contract remains unexecuted the corporation is not estopped to say it had not the power to make it, the court say, "it makes no difference in this respect whether it" (the defense of the *ultra vires*) "is interposed for or against a corporation."

In Rochester Insurance Co. *vs.* Martin, 13 Minn., 59, it was held that powers not conferred on a corporation by the statute creating it are withheld and denied as much as if the legislature had used express negative language for that purpose, (citing Bank of Augusta *vs.* Earle, 13 Pet. Rep., 588,) and that a party who had contracted with a corporation organized under the general laws of Minnesota was not estopped from setting up that the plaintiff, when sued upon the contract, had no authority under its charter to make it.

In Farmers' and Mechanics' Bank *vs.* Baldwin, 23 Minn., and in Bank *vs.* Pearson, 24 Minn., the same rule was stated, and the defense of *ultra vires* was permitted to be set up against the corporation in actions brought by them to enforce contracts which their charters did not authorize them to make.

In the Bank of Michigan *vs.* Niles, Walker Chan., (Mich.,) 99, specific performance was refused of a contract for the sale by the bank of certain real estate, made in excess of the bank's powers. The suit was brought by the bank, and the invalidity of the contract was therefore asserted by the other party.

Many other authorities might be cited to the same effect. The cases are numerous, and, with very few exceptions, will be found to be in harmony with the cases cited, and these few are cases in which the distinction was not properly drawn between the power of a corporation to perform the act in question for any purpose, and the power to perform it in the particular instance then under consideration.

IV. *Is the Oregon Railway and Navigation Company, by the act of its president and secretary in assuming to execute for it the contract set up in the complaint, estopped to deny that the hiring of said railroad was not within the scope of its corporate powers?*

The right of the plaintiff in error to set up as defense to the action its want of power to enter into said contract is unquestionable. Upon this point the court below (Deady, J.,) held that: "In an action against a corporation on a contract made by it the corporation is not estopped to show that such contract was beyond its power to make." (Thomas *vs.* R. R. Co., 101 U. S., 71; Ogdensburgh, &c., R. R. *vs.* Vermont and Canada R. R. Co., 4 Hun., N. Y. S. C., 712; Middlesex R. R. Co. *vs.* Boston & Chelsea R. R., 115 Mass., 346; Bradley *vs.* Belford, 55 Ills., 417; Bigelow on Estoppel, 3d edition, 466; Wood's Field on Corporations, Sec. 386.)

See also authorities cited to show that plaintiff in error is not estopped to deny that the execution of said contract was not within the corporate powers of the defendant in error.

If it shall be claimed that the pretended lease has been ratified by the stockholders of the defendant, it is a sufficient answer to such claim to say that it appears from the answer, and as the case now stands is admitted by the demurrer, that the pretended lease was not made with the consent of the defendant's stock-

holders; that it was not ratified by them, and that it was not made in their interest, nor so intended; that it was in violation of their rights; that it was a diversion of the money of defendant's stockholders to a purpose foreign from that for which it was subscribed and paid, and in which it was impossible they could have an interest; that it related to lines of road not contemplated in defendant's charter, and not possible for defendant legally to own or operate under that charter, and that plaintiff had full knowledge at the time of all these facts.

Again, if the execution of the lease was not within the corporate powers of the lessee to perform for any purpose, it could not be ratified by its stockholders.

Transactions not actually illegal or ultra vires, *but not originally binding on a corporation, may be ratified by it; but transactions which are absolutely illegal* or ultra vires *cannot be ratified.* (Green's Brice's Ultra Vires, 550, and cases cited.)

Respectfully submitted,

J. N. DOLPH,
of Counsel for Plaintiff in Error.

APPENDIX.

AN ACT to amend Section 5, of Title 1, of Chapter 7, of the miscellaneous laws of Oregon, as amended by Section 1 of an act entitled "An act to amend Sections 5, 17, and 22, of Title 1, of Chapter 7, of the miscellaneous laws of Oregon, as compiled by Matthew P. Deady and Lafayette Lane," approved October 21, 1878.

Be it enacted by the Legislative Assembly of the State of Oregon, That Section 5, of Title 1, of Chapter 7, of the miscellaneous laws of Oregon, as amended by Section 1 of an act entitled "An act to amend Sections 5, 17, and 22, of Title 1, of Chapter 7, of the miscellaneous laws of Oregon, as compiled by Matthew P. Deady and Lafayette Lane," approved October 21, 1878, be, and the same is hereby, amended so as to read as follows:

SECTION 5. Upon making and filing the articles of incorporation, as herein provided, the persons subscribing the same are incorporators and authorized to carry into effect the object specified in the articles in the manner provided in this chapter, and they and their successors, associates, and assigns by the name assumed in such article shall thereafter be deemed a body corporate with power: (1) to sue and be sued; (2) to contract and be contracted with; (3) to have and use a corporate seal, and the same to alter at pleasure; (4) to purchase, possess, and dispose of such real and personal property as may be necessary and convenient to carry into effect the objects of the incorporation, and to take, hold, and possess, and dispose of all real and personal property donated to such corporation by the United States, or by any State, Territory, county, city, or other municipal corporation, or by any person, firm, association, or private corporation for the purpose of aiding in the objects of such corporation; (5) to appoint such subordinate officers and agents as the business of the corporation may require, and prescribe their duties and compensation; (6) to make by-laws not inconsistent with any existing law for the sale of any portion of its stock for delinquent or unpaid assessments due thereon, which sale may be made without judgment or execution: *Provided*, That no such sale shall be made without thirty days' notice of time and place of sale in some newspaper in circulation in the neighborhood of such company for the transfer of its stock, for the management of its property, and for the general regulation of its affairs; (7) *in case the object or purpose for*

which any such corporation is incorporated is in whole or in part to construct, or construct and operate a railroad, to lease any part or all of its road to any other company incorporated for the purpose of maintaining and operating a railroad, and to lease or purchase, maintain and operate any part or all of any other railroad constructed by any other company, upon such terms and conditions as may be agreed upon between said companies, respectively. Any two or more railroad companies whose lines are connected may perfect any arrangement for their common benefit to assist and promote the object for which they were created: Provided, That nothing in this act shall be construed to authorize the leasing of any railroad line to any company or corporation owning a road which forms a competing or parallel line to its railroad.

Received at the executive office at 8 p. m., February 10, 1887. Filed in the office of the Secretary of State February 17, 1887, at 12:20 p. m.

NOTE.—The above act was presented to the Governor February 10, 1887, but was not returned by him to the Legislative Assembly, and became a law without his signature, by operation of Section 15 of Article V of the constitution.

An act to amend Section 1 of an act entitled "An Act to Authorize Foreign Incorporations to do business and Exercise their Corporate Powers within the State of Oregon," approved October 21, 1878:

Be it enacted by the Legislative Assembly of the State of Oregon, That Section 1 of an act entitled "An Act to authorize foreign incorporations to do business and exercise their corporate powers within the State of Oregon, approved October 21, 1878, be, and the same is hereby, amended so as to read follows:

SECTION 1. That any foreign corporation incorporated for the purpose of constructing, or constructing and operating, or for the purpose of or with the power of acquiring and operating any railway, macadamized road, plank road, clay road, canal, or bridge, or for the purpose of conducting water, gas or other substance by means of pipes laid under *the* ground shall, on compliance with the laws of this State for the regulation of foreign corporations transacting business therein, have the same rights, powers, and privileges in the exercise of the rights of eminent domain, collection of tolls, and other prerogative franchises, *and in the control, managment, and disposition of their business franchises and property as are possessed by corporations organized for similar purposes under the general incorporation laws of this State: Provided always, That in the case of the leasing of any line of railroad incorpo-*

rated under the laws of this State by a foreign corporation, such leasing shall be upon the fundamental condition following, and not otherwise:

First. That such foreign corporation shall enter into an agreement in writing with the State of Oregon, duly executed by said corporation, to be signed by its president and attested by its secretary, which agreement shall be filed with the Secretary of State of the State of Oregon, whereby and wherein said foreign corporation shall agree that in all suits or actions by and between said foreign incorporation and a citizen or citizens of this State, during the continuance of such lease, shall be prosecuted or defended to a final determination in the courts constituted by the laws of this State, except in cases when such action or suit shall be commenced in or removed to the Federal courts by a citizen of this State, and upon the failure to comply with the terms of such agreement by such foreign corporation, such lease shall utterly determine and be rendered null and void at the option of the Legislative Assembly of the State of Oregon.

Second. That the State of Oregon reserves to itself through is (its) Legislative Assembly, and in such manner as it shall determine, the right, power, and authority to prescribe the rate to be charged for the transportation of persons and property on such leased lines, and also to prescribe and make such police regulations for the government of such roads as it may from time to time determine.

Received at the executive office at 8 p. m., February 10, 1887.
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